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POLITICAL LAW

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UNIVERSITY OF SANTO TOMAS
MANILA**

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**For being our guideposts in understanding the intricate sphere of Political Law.
-Academics Committee 2018**

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THE PHILIPPINE CONSTITUTION

THE PHILIPPINE CONSTITUTION

Political Law

Branch of public law that deals with the organization and operations of the governmental organs of the State and defines its relations with the inhabitants of the territory (*People v. Perfecto*, G.R. No. L-18463, October 4, 1922).

Scope of Political Law

1. Political Law
2. Constitutional Law
3. Administrative Law
4. Law on Municipal Corporations
5. Law on Public Officers
6. Election laws
7. Public International Law

CONSTITUTION: DEFINITION, NATURE AND CONCEPTS

Constitution

The written instrument enacted by direct action of the people by which the fundamental powers of the government are established, limited and defined, and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic (*Malcolm, Philippine Constitutional Law*, p. 6).

Effectivity date of the present Constitution

The 1987 Constitution was ratified in a plebiscite on February 2, 1987 (*De Leon v. Esguerra*, G.R. No. L-78059, August 31, 1987).

Classifications of the Constitution

Written	Unwritten
Precepts are embodied in one document or set of documents.	Consists of rule, which have not been integrated into a single, concrete form but are scattered in various sources.
Enacted (Conventional)	Evolved (Cumulative)
Formally struck off at a definite time and place following a conscious or deliberate effort taken by a constituent body or	Result of political evolution, not inaugurated at any specific time but changing by accretion rather than by any

ruler.	systematic method.
Rigid	Flexible
Can be amended only by a formal and usually difficult process.	Can be changed by ordinary legislation.

NOTE: The Philippine Constitution is written, enacted, and rigid.

Ways to interpret the Constitution

1. *Verba legis* – Wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.
2. *Ratio legis est anima* – Where there is ambiguity, the words of the Constitution should be interpreted in accordance with the intent of the framers.

NOTE:

While it is permissible to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as . . . when the meaning is clear (*Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991).

The proceedings of the Convention are less conclusive in the proper construction of the **fundamental law** than are legislative proceedings of the proper construction of a **statute**, for in the latter case, it is the **intent of the legislature** the courts seek, while in the former, courts seek to arrive at the **intent of the people** through the discussions and deliberations of their representatives (*Integrated Bar of the Philippines v. Hon. Ronaldo Zamora*, G.R. No. 141254, August 15, 2000, *Puno, C.J. separate opinion*).

3. *Ut magis valeat quam pereat* – The Constitution is to be interpreted as a whole (*Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003).

PARTS OF A WRITTEN CONSTITUTION

1. *Constitution of Sovereignty* – Provisions pointing out the modes or procedure in accordance with which formal changes in the



POLITICAL LAW

Constitution may be made (1987 Constitution, Art. XVII).

2. *Constitution of Liberty* – Series of prescriptions setting forth the fundamental civil and political rights of the citizens and imposing limitations on the power of the government as a means of securing the enjoyment of those rights (1987 Constitution, Art. III).
3. *Constitution of Government*– Provides for a structure and system of government; provisions outlining the organization of the government, enumerating its powers, laying down certain rules relative to its administration and defining the electorate [1987 Constitution, Art. VI (Legislative Dep't); Art. VII (Exec. Dep't)]; Art. VIII (Judicial Dep't); Art. IX (Constitutional Commissions)].

AMENDMENTS AND REVISIONS

Amendment vs. Revision

BASIS	AMENDMENT	REVISION
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Definition	Isolated or piecemeal change merely by adding, deleting, or reducing without altering the basic principles involved.	A revamp or rewriting of the whole instrument altering the substantial entirety of the Constitution.
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Tests to determine whether a proposed change is an amendment or a revision

1. *Quantitative test* – Asks whether the proposed change is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions. One examines only the number of provisions affected and does not consider the degree of the change.
2. *Qualitative test* – Asks whether the change will accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision (*Lambino v. Comelec, G.R. No. 174153, October 25, 2006*).

Ways to amend or revise the Constitution

BASIS	CONSTITUENT ASSEMBLY (ConAss)	CONSTITUTIONAL CONVENTION (ConCon)	PEOPLE'S INITIATIVE
How proposed	By Congress acting as Constituent Assembly upon a vote of ¾ of ALL its members (2014 Bar) NOTE: The law is silent as to whether the voting is done separately or jointly; however, voting separately is the prevailing view regarding the matter for the Congress is bicameral.	1. By Congress upon a vote of 2/3 of ALL its members (<i>to call for a ConCon</i>); OR 2. Upon a majority vote of ALL members of Congress to submit to the Electorate the question of calling a ConCon (+Plebiscite) (1987 Constitution, Art. XVII, Sec. 3) NOTE: The law is silent as to whether the voting is done separately or jointly; however, voting separately is the prevailing view regarding the matter for the Congress is bicameral.	By the people, upon a petition thru a plebiscite (at least 12% of the TOTAL number of registered voters, of which <i>every legislative district</i> must be represented by 3% of the registered voters therein (1987 Constitution, Art. XVII, Sec. 2) (+Full text of the proposed amendments attached in the petition) NOTE: No amendment shall be authorized more than once every five years thereafter
Coverage	Amendment or Revision		Amendment ONLY



Legal Questions (Subject to Judicial Review)	1. Manner of Proposal; or 2. Manner of calling ConCon - This is a case where Congress, acting as a ConAss, calls for a ConCon but does not provide details for the calling of such ConCon, and Congress, in exercising its ordinary legislative power, may supply such details.	Propositions can be declared null and void for: 1. Violation of the Constitution
Political Questions	Substance of the proposal.	
	Whether ConAss or ConCon should initiate the amendment or revision.	
Limits		No amendment be authorized oftener than once every 5 years (1987 Constitution, Art. XVII, Sec. 2).

Ratification

Amendments or revisions to the Constitution by Constituent Assembly or Constitutional Convention shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than 60 days nor later than 90 days after the **approval** of such amendment or revision.

Amendments by People's Initiative shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than 60 days nor later than 90 days after the **certification** by the COMELEC of the sufficiency of the petition.

Requisites for a valid Ratification

1. Held in a plebiscite conducted under the Election Law;
2. Supervised by COMELEC; and
3. Only registered voters take part.

Doctrine of Proper Submission

The people must be sufficiently informed of the amendments to be voted upon, for them to conscientiously deliberate thereon, to express their will in a genuine manner. Submission of piece-meal amendments is unconstitutional.

A plebiscite may be held on the same day as a regular election (*Gonzales v. COMELEC*, G.R. No. L-28196, Nov. 9, 1967).

All amendments must be submitted for ratification in one plebiscite only. The people have to be given a

proper frame of reference in arriving at their decision
(*Tolentino v. COMELEC*, G.R. No. L-34150, October 16, 1971).

Initiative

Power of the people to propose amendments to the Constitution or to propose and enact legislation.

Kinds of Initiative under the Initiative and Referendum Act (RA 6735)

1. *Initiative on the Constitution* – Refers to a petition proposing amendments to the Constitution.
2. *Initiative on statutes* – Refers to a petition to enact a national legislation.
3. *Initiative on local legislation* – Refers to a petition proposing to enact a regional, provincial, municipal, city, or barangay law, resolution or ordinance [RA 6735, Sec. 3 (a)].

NOTE: Sec. 3 (b) of RA 6735 provides for:

- a. *Indirect Initiative* – Exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action.
- b. *Direct Initiative* – The people themselves filed the petition with the COMELEC and not with Congress.

RA 6735 is INADEQUATE in covering the system of initiative on amendments to the Constitution (2014 Bar)



Under the said law, initiative on the Constitution is confined only to proposals to amend. The people are not accorded the power to "directly propose, enact, approve, or reject, in whole or in part, the Constitution" through the system of initiative. They can only do so with respect to "laws, ordinances, or resolutions." Secondly, the Act does not provide for the contents of a petition for initiative on the Constitution. The use of the clause "proposed laws sought to be enacted, approved or rejected, amended or repealed" denotes that RA 6735 excludes initiative on the amendments of the Constitution.

Also, while the law provides subtitles for National Initiative and Referendum and for Local Initiative and Referendum, no subtitle is provided for initiative on the Constitution. This means that the main thrust of the law is initiative and referendum on national and local laws. If RA 6735 were intended to fully provide for the implementation of the initiative on amendments to the Constitution, it could have provided for a subtitle, considering that in the order of things, the primacy of interest, or hierarchy of values, the right of the people to directly propose amendments to the Constitution is far more important than the initiative on national and local laws.

While RA 6735 specially detailed the process in implementing initiative and referendum on national and local laws, it intentionally did not do so on the system of initiative on amendments to the Constitution (*Defensor-Santiago v. COMELEC G.R. No. 127325, March 19, 1997*).

Referendum

Power of the electorate to approve or reject legislation through an election called for that purpose.

Kinds of Referendum

1. *Referendum on Statutes* - Refers to a petition to approve or reject a law, or part thereof, passed by Congress.
2. *Referendum on Local Law* - Refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies.

Initiative vs. Referendum (2000 Bar)

BASIS	INITIATIVE	REFERENDUM
Definition	The power of the people to propose amendments to	Power of the electorate to approve or

	the Constitution or to propose and enact legislations through an election called for the purpose.	reject legislation through an election called for that purpose [RA No. 6735 [1989], Sec. 3(c)].
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NOTE: The following cannot be subject of an initiative or referendum:

- a. No petition embracing more than one (1) subject shall be submitted to the electorate.
- b. Statutes involving emergency measures, the enactment of which are specifically vested in Congress by the Constitution, cannot be subject to referendum until 90 days after their effectivity. (*RA 6735, Sec. 10*).

SELF-EXECUTING AND NON-SELF-EXECUTING PROVISIONS

Self-executing provision

Provision which is complete by itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected; nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself and there is no language indicating that the subject is referred to the legislature for action.

GR: All provisions of the Constitution are **SELF-EXECUTORY**.

Rationale: A contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute (*Manila Prince Hotel v. GSIS, G.R. 122156, Feb. 3, 1997*).

XPN: When it is expressly provided that a legislative act is necessary to enforce a constitutional mandate; or those provisions which lay down general principles are usually **NOT self-executory** (*Manila Prince Hotel v. GSIS, G.R. 122156, Feb. 3, 1997*):

- a. Art. II: "Declaration of Principles and State Policies".
- b. Art. XIII: "Social Justice and Human Rights"
- c. Art. XIV: "Education Science and Technology, Arts, Culture and Sports"

NOTE: Such provisions are not ready for enforcement through the courts but are used by the judiciary as aids or guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws (*Tondo Medical Employees Association v. CA*, G.R. No. 167324, July 17, 2007).

XPN to the XPN: Sec. 16, Art. II – Right to a balanced and healthful ecology (*Oposa v. Factoran*, G.R. No. 101083, July 30, 1993), Right to information in Art. III, and Filipino First Policy (*Manila Prince Hotel v. GSIS*, G.R. No. 122156, Feb. 3, 1997).

NOTE: In case of doubt, the provisions of the Constitution should be construed as self-executing; mandatory rather than directory; and prospective rather than retroactive (*Cruz and Cruz, Constitutional Law*, p. 8).

GENERAL PROVISIONS

Flag of the Philippines

It shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law (*1987 Constitution, Art. XVI, Sec. 1*).

Symbols of nationality

1. Philippine Flag – the flag may be changed by constitutional amendment;
2. Name for the country;
3. National anthem; and
4. National seal.

NOTE: Congress may, by law, adopt new symbols in numbers 2, 3 and 4. Such law shall take effect only upon its ratification by the people in a national referendum (*1987 Constitution, Art. XVI, Sec. 2*).

Composition of the Armed Forces of the Philippines

It shall be composed of a citizen armed force which shall undergo military training and serve, as may be provided by law. It shall keep a regular force necessary for the security of the state (*1987 Constitution, Art. XVI, Sec. 4*).

Bar on the AFP to participate in partisan political activities

It shall be insulated from partisan politics. No member of the military shall engage directly or indirectly in any partisan political activity, except to vote [*1987 Constitution, Art. XVI, Sec. 5(3)*].

NOTE: The prohibition also extends to government-owned or controlled corporations (GOCC) or any of

their subsidiaries [*1987 Constitution, Art. XVI, Sec. 5(4)*].

Period of the tour of duty of the Chief of Staff

GR: It shall not exceed three (3) years.

XPN: It can be extended by the President during times of war or any other national emergency, provided that the existence of such be declared by the Congress (*1987 Constitution, Art. XVI, Sec. 5*).



GENERAL CONSIDERATIONS

NATIONAL TERRITORY (1996, 2004, 2005, 2009 Bar)

Territory

Fixed portion of the surface of the Earth inhabited by the people of the State. As an element of a State, it is an area over which a state has effective control.

Composition of the Philippine Territory

1. *The Philippine archipelago*– That body of water studded with islands which is delineated in the Treaty of Paris, as amended by the Treaty of Washington and the Treaty with Great Britain.

CONSISTS OF	INCLUDING ITS
a. Terrestrial b. Fluvial c. Aerial Domains	1. Territorial Sea 2. Seabed 3. Subsoil 4. Insular shelves 5. Other Submarine areas

2. *All other territories over which the Philippines has sovereignty or jurisdiction*– Includes any territory that presently belongs or might in the future belong to the Philippines through any of the accepted international modes of acquiring territory.

Components of the National Territory

1. Terrestrial Domain
2. Maritime Domain
3. Aerial Domain

Q: William, a private American citizen and frequent visitor to the Philippines, was inside the U.S. embassy when he got into a heated argument with a private Filipino citizen. Then, in front of many shocked witnesses, he killed the person he was arguing with. The police came, and brought him to the nearest police station. Upon reaching the station, the police investigator, in halting English, informed William of his Miranda rights, and assigned him an independent local counsel. William protested his arrest. He argued that since the incident took place inside the U.S. embassy, Philippine courts have no jurisdiction because the U.S. embassy grounds are not part of Philippine territory; thus, technically, no crime under Philippine law was committed. Is William correct? (2009 Bar)

A: **NO.** William is not correct. The premises occupied by the United States Embassy do not constitute territory of the United States but of the Philippines. Crimes committed within them are subject to the territorial jurisdiction of the Philippines. Since William has no diplomatic immunity, the Philippines can prosecute him if it acquires custody over him (*UPLC Suggested Answers to the Bar*).

NOTE: Foreign embassies retain their status as native soil. They are still subject to Philippine authority. Its jurisdiction may be diminished, but it does not disappear. So it is with the bases under lease to the American armed forces by virtue of the military bases agreement of 1947. They are not and cannot be considered as foreign territory.

Not even the embassy premises of a foreign power are to be considered outside the territorial domain of the host state. The ground occupied by an embassy is not in fact the territory of the foreign State to which the premises belong through possession or ownership. The lawfulness or unlawfulness of acts they committed is determined by the territorial sovereign. If an *attaché* commits an offense within the precincts of an embassy, his immunity from prosecution is not because he has not violated the local law, but rather for the reason that the individual is exempt from prosecution. If a person not so exempt, or whose immunity is waived, similarly commits a crime therein, the territorial sovereign, if it secures custody of the offender, may subject him to prosecution, even though its criminal code normally does not contemplate the punishment of one who commits an offense outside of the national domain. It is not believed, therefore, that an ambassador himself possesses the right to exercise jurisdiction, contrary to the will of the State of his sojourn, even within his embassy with respect to acts there committed. Nor is there apparent at the present time any tendency on the part of States to acquiesce in his exercise of it (*William C. Reagan v. CIR, G.R. No. L-26379, December 27, 1969*).

ARCHIPELAGIC DOCTRINE

Archipelagic State

A state constituted wholly by one or more archipelagos and may include other islands.

Archipelagic Doctrine (2015 Bar)

The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines (1987 Constitution, Art. I).



Under the Archipelagic Doctrine, we connect the outermost points of our archipelago with straight baselines and consider all the waters enclosed thereby as internal waters. The entire archipelago is regarded as one integrated unit instead of being fragmented into so many thousand islands (*Cruz and Cruz, Philippine Political Law, p. 24*).

Purposes of the Archipelagic Doctrine

- a. Territorial Integrity
- b. National Security
- c. Economic reasons

NOTE: The main purpose of the archipelagic doctrine is to protect the territorial interests of an archipelago, its territorial integrity. Without it, there would be “pockets of high seas” between some of our islands and islets, thus foreign vessels would be able to pass through these “pockets of seas” and would have no jurisdiction over it.

Effect of RA 9522 (*An Act to Amend Certain Provisions of RA 3046, As Amended by RA 5446, To Define the Archipelagic Baseline of the Philippines and For Other Purposes*) on specific description and affirmation of sovereignty over our national territory

RA 9522 amends RA 3046, which defines the baselines of the territorial sea of the Philippines. The *Kalayaan* Island Group as constituted under PD 1596 and *Bajo de Masinloc*, also known as Scarborough Shoal is determined as “Regime of Islands” under the Republic of the Philippines consistent with Art. 121 of the United Nations Convention on the Law of the Sea which states:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in par. 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Spratlys Group of Islands (SGI) is not part of the Philippine Archipelago because it is too far to be included within the archipelagic lines encircling the internal waters of Philippine Archipelago. The SGI, however, is part of the Philippine territory because it was discovered by a Filipino seaman in the name of Tomas Cloma who later renounced his claim over it in favor of the Republic of the Philippines. Subsequently, then Pres. Marcos issued a Presidential Decree constituting SGI as part of the

Philippine territory and sending some of our armed forces to protect said island and maintain our sovereignty over it.

SGI and Scarborough Shoal as part of the National Territory (2013 Bar)

The SGI and Scarborough Shoal fall under the 2nd phrase of Art. II, i.e. “and all other territories over which the Philippines has sovereignty or jurisdiction.” It is part of our national territory because the Philippines exercise sovereignty (through election of public officials) over the Spratly Group of Islands. Moreover, under the *Philippine Baselines Law of 2009* (RA 9522), the Spratly Islands and the Scarborough Shoal are classified as islands under the regime of the Republic of the Philippines. (*Philippine Baselines Law of 2009*).

STATE IMMUNITY

Doctrine of State Immunity

The State may not be sued without its consent. (*1987 Constitution, Art. XVI, Sec. 3*).

Basis of the Doctrine of State Immunity

It is obvious that indiscriminate suits against the state will result in the impairment of its dignity, besides being a challenge to its supposed infallibility. To Justice Holmes, however, the doctrine of non-suability is based not on “any formal conception or obsolete theory but on the logical and practical ground that there can be no legal right against the authority which makes the law on which the right depends.”

Another justification is the practical consideration that demands and inconveniences of litigation will divert the time and resources of the State from the more pressing matters, demanding its attention, to the prejudice of the public welfare (*Cruz and Cruz, Philippine Political Law, p. 48*).

GR: All states are sovereign equals and cannot assert jurisdiction over one another, consonant with the public international law principle of *par in parem non habet imperium*. A contrary disposition would “unduly vex the peace of nations” (*Arigo v. Swift, G.R. No. 206510, September 16, 2014*).

The head of State, who is deemed the personification of the State, is inviolable, and thus, enjoys immunity from suit (*JUSMAG Philippines v. NLRC, G.R. No. 108813, Dec. 15, 1994*).

Likewise, public officials may not be sued for acts done in the performance of their official functions or within the scope of their authority (*DOH v. Phil.*



Pharmawealth, Inc., G.R. No. 182358, February 20, 2013).

NOTE: The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, the suit may be regarded as against the state itself although it has not been formally impleaded (*Garcia v. Chief of Staff, G.R. No. L-20213, January 31, 1966*).

XPN: A State may be sued if it gives consent, whether express or implied.

Q: The USS Guardian of the US Navy ran aground on an area near the Tubbataha Reefs, a marine habitat of which entry and certain human activities are prevented and afforded protection by Philippine laws and UNCLOS. Bishop Arigo of Palawan filed a petition for the issuance of Writ of Kalikasan and impleaded US officials in their capacity as commanding officers of the US Navy. He argues that there is a waiver of immunity from suit found in the Visiting Forces Agreement (VFA) between the US and the Philippines, and invoke federal statutes in the US under which agencies of the US have statutorily waived their immunity to any action. Is he correct?

A: NO. The VFA is an agreement which defines the treatment of United States troops and personnel visiting the Philippines to promote "common security interests" between the US and the Philippines in the region. The invocation of US federal tort laws and even common law is thus improper considering that it is the VFA which governs disputes involving US military ships and crew navigating Philippine waters in pursuance of the objectives of the agreement. However, the waiver of State immunity under the VFA pertains only to criminal jurisdiction and applicable only to US personnel under VFA and not to special civil actions such as the present petition for issuance of a Writ of *Kalikasan*. The principle of State immunity therefore bars the exercise of jurisdiction by this Court over the persons of the US Officials (*Arigo v. Swift, G.R. No. 206510, September 16, 2014*).

Remedy of a person who feels aggrieved by the acts of a foreign government

Under both Public International Law and Transnational Law, a person who feels aggrieved by the acts of a foreign sovereign can ask his own government to espouse his cause through diplomatic channels (*Holy See v. Rosario, G.R. No. 101949, December 1, 1994*).

Forms of consent

1. *Express consent*

a. General law

- i. *Act No. 3083* and *CA 327* as amended by Secs. 49-50, PD 1445 – Money claims arising from contracts which could serve as a basis of civil action between private parties to be first filed with COA before a suit may be filed in court. The COA must act upon the claim within 60 days. Rejection of the claim authorizes the claimant to elevate the matter to the Supreme Court on *certiorari*.
- ii. *Art. 2180, NCC* – Tort committed by special agent;
- iii. *Art. 2189, NCC* – LGUs liable for injuries or death caused by defective condition of roads or public works under their control (*City of Manila v. Teotico, et al., G.R. No. L-23052, January 29, 1968*);
- iv. *Sec. 22(2), RA 7160, LGC of 1991* – LGUs have power to sue and be sued; and
- v. *Sec. 24 of LGC* – LGUs and their officials are not exempt from liability for death or injury or damage to property.

NOTE: The express consent of the State to be sued must be embodied in a **duly enacted statute** and may not be given by a mere counsel of the government (*Republic v. Purisima, G.R. No. L-36084, Aug. 31, 1977*).

Q: *Kilusang Magbubukid ng Pilipinas* (KMP) members clashed with the anti-riot squad which resulted to 13 deaths and several casualties. Thereafter, President Corazon C. Aquino issued AO 11 creating the Citizens' Mendiola Commission to conduct the investigation about the incident. The commission recommended compensating the victims. The petitioners (Caylao group) together with the military personnel involved in the Mendiola incident instituted an action against the Republic of the Philippines before the trial court. Respondent Judge Sandoval dismissed the complaint on the ground of state immunity from suit. Petitioners argued that the State has impliedly waived its immunity from suit with the recommendation of the Commission to indemnify the heirs and victims of the Mendiola incident by the government and by the public addresses made by then President Aquino in the aftermath of the killings. Is the argument meritorious?

A: NO. The actions of President Aquino cannot be deemed as a waiver of State immunity. Whatever acts or utterances that then President Aquino may have done or said, the same are not tantamount to



the State having waived its immunity from suit. The President's act of joining the marchers, days after the incident, does not mean that there was an admission by the State of any liability. Moreover, petitioners rely on President Aquino's speech promising that the government would address the grievances of the rallyists. By this alone, it cannot be inferred that the State has admitted any liability, much less can it be inferred that it has consented to the suit (*Republic v. Sandoval*, G.R. No. 84607, March 19, 1993).

b. Special law

- i. By virtue of PD 1620, the grant of immunity to IRRI is clear and unequivocal, and an express waiver by its Director General is the only way by which it may relinquish or abandon this immunity (*Callado v. IRRI*, G.R. No. 106483, May 22, 1995).

2. Implied consent

- a. When the State **commences litigation**, it becomes vulnerable to counterclaim (*Froilan v. Pan Oriental Shipping*, G.R. No. L-6060, September 30, 1954).

Q: In a property dispute, the Attorney General of the United States and the defendant-intervenor Republic of the Philippines each filed an answer alleging by way of affirmative defense that the lower court had no jurisdiction over the claim since the action in that regard constituted a suit against the United States to which it had not given its consent. Did the Republic of the Philippines by its intervention waive its right of immunity from suit?

A: NO. The Republic of the Philippines did not waive its immunity from suit. The Republic of the Philippines intervened in the case merely to unite the defendant Attorney General of the United States in resisting plaintiff's claims, and for that reason asked no affirmative relief against any party in the answer in intervention it filed, and in its answer to the amended complaint, "reproduced and incorporated by reference" all the affirmative defenses contained in the answer of the defendant Attorney General, one of which is that the lower court had no jurisdiction over the claim for rentals because of lack of consent to be sued. This is not a case where the state takes the initiative against a private party by filing a complaint in intervention, thereby surrendering its privileged position and coming down to the level of the defendant, but one where the state, as one of the defendants, merely resisted a claim against it precisely on the ground among others, of its privileged position, which exempts it from suit (*Lim v. Brownell*, G.R. No. L-8587, March 24, 1960).

- b. When State enters into a **business contract**.

Capacities of the State in entering into contracts

1. *In jure gestionis* – By right of economic or business relations; commercial, or proprietary acts. MAY BE SUED (*US v. Guinto*, G.R. No. 76607, February 26, 1990).

NOTE: The State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. Consequently, the restrictive application of State immunity is proper only in such case (**Restrictive Theory of State Immunity from suit**).

2. *In jure imperii* – By right of sovereign power and in the exercise of sovereign functions. No implied consent (*US v. Ruiz*, G.R. No. L-35645, May 22, 1985).

NOTE: In exercising the power of eminent domain, the State exercises a power *jure imperii*. Yet, it has been held that where property has been taken without the payment of just compensation, the defense of immunity from suit cannot be set up in an action for payment by the owner (*Republic v. Sandiganbayan*, G.R. No. 90478, November 21, 1991).

Q: Do all contracts entered into by the government operate as a waiver of its non-suability?

A: NO. Distinction must still be made between one which is executed in the exercise of its sovereign function and another which is done in its proprietary capacity. A State may be said to have descended to the level of an individual and can be deemed to have actually given its consent to be sued only when it enters into business contracts. It does not apply where the contract relates to the exercise of its sovereign functions (*Department of Agriculture v. NLRC* G.R. No. 104269, Nov. 11, 1993).

A suit is considered as suit against the State when:

1. The Republic is sued by name;
2. The suit is against an unincorporated government agency performing proprietary functions; and



3. The suit is on its face against a government officer but the case is such that ultimate liability will belong to the government (*Republic v. Sandoval*, G.R. No. 84607, March 19, 1993).

Q: Spouses Sison sued the Philippine National Railways for damages for the death of their son who fell from an overloaded train belonging to the PNR. The trial court dismissed the suit on the ground that the charter of the PNR, as amended by PD 741, has made the same a government instrumentality, and thus immune from suit. Is the dismissal proper?

A: NO. PNR is not immune from suit. It did not remove itself from the operation of Arts. 1732 to 1766 of the Civil Code on common carriers. Not all government entities, whether corporate or non-corporate, are immune from suits. Immunity from suit is determined by the character of the objects for which the entity is organized. When the government enters into a commercial business, it abandons its sovereign capacity and is to be treated like any other corporation. In this case, the State divested itself of its sovereign capacity when it organized the PNR which is no different from its predecessors, the Manila Railroad Company (*Malang v. PNRC*, G.R. No. L-49930, August 7, 1985).

Unincorporated government agency performing governmental function vs. one performing proprietary functions

BASIS	UNINCORPORATED GOVERNMENT AGENCY PERFORMING GOVERNMENTAL FUNCTIONS	UNINCORPORATED GOVERNMENT AGENCY PERFORMING PROPRIETARY FUNCTIONS
Definition	Immunity has been upheld in its favor because its function is governmental or incidental to such function.	Immunity has not been upheld in its favor whose function was not in pursuit of a necessary function of government but was essentially a business (<i>Air Transportation Office v. Sps. David</i> , G.R. No. 159402, Feb. 23, 2011).

Implications of the phrase “waiver of immunity by the State does not mean a concession of its liability

When the State gives its consent to be sued, all it does is to give the other party an opportunity to show that the State is liable. Accordingly, the phrase that “waiver of immunity by the State does not mean a concession of liability” means that by consenting to be sued, the State does not necessarily admit that it is liable.

In such a case, the State is merely giving the plaintiff a chance to prove that the State is liable but the State retains the right to raise all lawful defenses (*Philippine Rock Industries, Inc. v. Board of Liquidators*, G.R. No. 84992, December 15, 1989).

Q: Spouses David and Elisea Ramos discovered that a portion of their land in Baguio City was being used as part of the runway and running shoulder of the Loakan Airport being operated by Air Transportation Office (ATO). The Spouses Ramos agreed to convey the affected portion by deed of sale to the ATO for consideration, which ATO failed to pay. In an action for collection of money against ATO, the latter invoked Proclamation No. 1358 whereby it reserved certain parcels of land, including the subject portion herein, for the use of the Loakan Airport. They asserted that RTC did not have any jurisdiction to entertain the action without the State’s consent. The RTC and CA dismissed the petition. Can the ATO be sued without the State’s consent?

A: YES. An unincorporated government agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. However, the need to distinguish between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The juridical character of ATO is an agency of the government without performing a purely governmental or sovereign function but is instead involved in the management and maintenance of the Loakan Airport, an activity that was not exclusive prerogative of the State in its sovereign capacity. Hence, the ATO had no claim to the State immunity from suit. The obligation of ATO to Spouses Ramos might be enforced against CAAP (*Air Transportation Office v. Sps. David*, G.R. No. 159402, February 23, 2011).

Suability vs. Liability of the State

BASIS	SUABILITY	LIABILITY
<i>As to basis</i>	Depends on the consent of the State to be sued	Depends on the applicable law and the established facts
<i>As a consequence of another</i>	The circumstance that a State is suable does not necessarily mean that it is liable.	The State can never be held liable if it is not suable.

Rule on the liabilities of the following:

1. *Public officers*– By their acts without or in excess of jurisdiction: any injury caused by him is his own personal liability and cannot be imputed to the State.
2. *Government agencies*– Establish whether or not the State, as principal which may ultimately be held liable, has given its consent.
3. *Government*– Doctrine of State immunity is available.

Instances when a public officer may be sued without the State's consent

1. To compel him to do an act required by law;
2. To restrain him from enforcing an act claimed to be unconstitutional;
3. To compel payment of damages from an already appropriated assurance fund or to refund tax over-payments from a fund already available for the purpose;
4. To secure a judgment that the officer impleaded may satisfy the judgment by himself without the State having to do a positive act to assist him; or
5. Where the government itself has violated its own laws because the doctrine of State immunity cannot be used to perpetrate an injustice.

GR: The true test in determining whether a suit against a public officer is a suit against the State is that, if a public officer or agency is sued and made liable, the **State will have to perform an affirmative act of appropriating the needed amount to satisfy the judgment.** If the State will have to do so, then, it is a suit against the State.

XPNs:

1. The public official is charged in his official capacity for acts that are unlawful and injurious to the rights of others. Public officials are not exempt, in their *personal capacity*,

from liability arising from acts committed in bad faith; or

2. The public official is clearly being sued not in his official capacity but in his personal capacity, although the acts complained of may have been committed while he occupied a public position (*Lansang v. CA, G.R. No. 102667, February 23, 2000*).

Garnishment of government funds

GR: Whether the money is deposited by way of general or special deposit, they remain government funds and are not subject to garnishment.

XPN: Where a law or ordinance has been enacted appropriating a specific amount to pay a valid government obligation, then the money can be garnished.

NOTE: Funds belonging to government corporations, which can sue and be sued and are deposited with a bank, can be garnished (*PNB v. Pabalan, G.R. No. L-33112, June 15, 1978*).

If the local legislative authority refuses to enact a law appropriating the money judgment rendered by the court, the winning party may file a **petition for mandamusto** compel the legislative authority to enact a law (*Municipality of Makati v. CA, G.R. Nos. 89898-99, October 1, 1990*).

The government cannot be made to pay interest in money judgments against it, except in the following instances

1. Exercise of the power of eminent domain
2. Erroneous collection of taxes
3. Where government agrees to pay interest pursuant to law

Q: Keanu Lazzer filed an action directly in court against the government seeking payment for a parcel of land which the national government utilized for a road widening project. Can the government invoke the doctrine of non-suitability of the state?

A: NO. When the government expropriates property for public use without paying just compensation, it cannot invoke its immunity from suit. Otherwise, the right guaranteed in Sec. 9, Art. III of the 1987 Constitution that private property shall not be taken for public use without just compensation will be rendered nugatory (*Ministerio v. CFI, G.R. No. L-31635, August 31, 1971*).

Q: Sps. Benigno sought to register their lot. The RTC granted their petition. Arguing that the lot is inalienable, the Republic, through the OSG, appealed before the CA but moved four times to



extend the period for filing its appellant's brief. CA dismissed the OSG's appeal. The OSG filed its brief after moving to reconsider the CA's denial of its appeal. However, CA stood its ground on its original decision. Does the OSG's failure to file the Republic's appeal brief bind the State?

A:NO. As a matter of doctrine, illegal acts of government agents do not bind the State, and the Government is never estopped from questioning the acts of its officials, more so if they are erroneous, let alone irregular. This principle applies in land registration cases. Certainly, the State will not be allowed to abdicate its authority over lands of the public domain just because its agents and officers have been negligent in the performance of their duties (*Republic v. Sps. Benigno, G.R. No. 205492, March 11, 2015*).

GENERAL PRINCIPLES AND STATE POLICIES

Doctrine of Constitutional Supremacy

Under this doctrine, if a law or contract violates any norm of the Constitution, that law or contract, whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes, is null and void and without any force and effect. Since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract (*Manila Prince Hotel v GSIS, G.R. No. 122156, February 3, 1997*).

Republican State (1996 Bar)

The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them (*1987 Constitution, Art. II, Sec. 1*).

A state wherein all government authority emanates from the people and is exercised by representatives chosen by the people (*Dissenting Opinion of Justice Puno, Tolentino v. COMELEC, G.R. No. 148334, January 21, 2004*).

Manifestations of Republicanism

1. Ours is a government of laws and not of men.
2. Rule of Majority (Plurality in elections)
3. Accountability of public officials
4. Bill of Rights
5. Legislature cannot pass irrepealable laws
6. Separation of powers

NOTE: The Philippines is not only a representative or republican state but also shares some aspects of direct democracy that accords to the citizens a greater participation in the affairs of the government such people's as initiative and

referendum, the right to information on matters of public concern etc.

Constitutional Authoritarianism

As understood and practiced in the Marcos regime under the 1973 constitution, it is the assumption of extraordinary powers by the President including legislative and judicial and even constituent powers.

Compatibility of constitutional authoritarianism with a republican state

Constitutional authoritarianism is compatible with a republican state if the Constitution upon which the Executive bases his assumption of power is a legitimate expression of the people's will and if the Executive who assumes power received his office through a valid election by the people.

State policy on war

The State renounces war as an instrument of national policy (*1987 Constitution, Art. II, Sec. 2*).

NOTE: The Philippines does not renounce defensive war because it is duty bound to defend its citizens. Under the Constitution, the prime duty of the government is to serve and protect the people.

Voting requirements to declare the existence of a state of war

1. 2/3 vote of both Houses
2. In joint session
3. Voting separately

NOTE: Even though the legislature can declare an existence of war and enact measures to support it, the actual power to engage in war is lodged, nonetheless, in the executive.

Independent Foreign Policy and a nuclear-free Philippines

The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination (*1987 Constitution, Art. 2, Sec. 7*).

The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory (*1987 Constitution, Art. II, Sec. 8*).

NOTE: This pertains to use of nuclear weapons and not nuclear source of energy.



All existing treaties or international agreements which have not been ratified shall not be renewed or extended without the concurrence of at least two-thirds of all the Members of the Senate (1987 Constitution, Art. XVIII, Sec. 4).

After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning military bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State (1987 Constitution, Art. XVIII, Sec. 25).

Policies of the State on the following:

1. *Working women* – 1987 Constitution, Sec. 14, Art. XIII: "The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."
2. *Ecology* – 1987 Constitution, Sec. 16, Art. II: "The State shall protect and advance the right of the people and their posterity to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

Q: The residents of Taguig City brought a complaint before Laguna Lake Development Authority (LLDA) about an open garbage dumpsite in their city and sought its closure due to its harmful effects on health and the pollution it brings to the lake. Upon investigation, LLDA discovered that the Taguig City Government has been maintaining the said dumpsite without an Environmental Compliance Certificate from the Environmental Management Bureau of the DENR, and also found the water to have been directly contaminated by the dumpsite operations. Then, LLDA, under RA 4850, issued a "cease and desist" order against the City Government to completely stop the dumping of any form or kind of waste matter to the dumpsite. Does the LLDA have the power and authority to issue a "cease and desist" order under RA 4850 enjoining the dumping of garbage in Taguig City?

A: YES. In the exercise, therefore, of its express powers under its charter as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region, the authority of the LLDA to issue a "cease and desist" order is implied and need

not necessarily be express. Moreover, the immediate response to the demands of "the necessities of protecting vital public interests" gives vitality to the statement on ecology embodied in Art. II, Sec. 16 of the Constitution which provides: The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. As a constitutionally guaranteed right of every person, it carries the correlative duty of non-impairment. Hence, the issuance of the cease and desist order by the LLDA is a proper exercise of its power and authority under its charter and in consonance with the declared policy of the state to protect and promote the right to health of the people and instill health consciousness among them (Laguna Lake Development Authority v. CA, G.R. No. 110120, March 16, 1994).

3. *The symbols of statehood* – Flag of the Philippines (1987 Constitution, Art. XVI, Sec. 1).

Name of the country, National Anthem, and National Seal (1987 Constitution, Art. XVI, Sec. 2).

4. *Cultural minorities* – Recognition and Promotion of Rights of Indigenous Cultural Communities (1987 Constitution, Art. II, Sec. 22). **(1994, 1996 Bar)**

Protection of Ancestral Lands of Indigenous Communities (1987 Constitution, Art. XII, Sec. 5).

Application of Principles of Agrarian Reform and Stewardship to Indigenous Communities and Landless Farmers (1987 Constitution, Art. XIII, Sec. 65).

Preservation and Development of the Culture, Traditions, and Institutions of Indigenous Communities (1987 Constitution, Art. XIV, Sec. 17).

5. *Science and technology* – Priority to Education, Science and Technology, Arts, Culture, and Sports. (1987 Constitution, Art. II, Sec. 17). **(1992, 1994 Bar)**

Development of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen (1987 Constitution, Art. XII, Sec. 14).

Mandate on educational institutions [1987 Constitution, Art. XIV, Sec. 3(4)].



Priority to research and development, invention, innovation of science and technology (1987 Constitution, Art. XIV, Sec. 10).

Incentives, tax deductions, and scholarships to encourage private participation in programs of basic and applied scientific research (1987 Constitution, Art. XIV, Sec. 11).

Encouragement of widest participation of private groups, local governments, and organizations in the generation and utilization of science and technology (1987 Constitution, Art. XIV, Sec. 12).

Constitutional provision on transparency in matters of public concern (2000 Bar)

The 1987 Constitution provides for a policy of transparency in matters of public interest:

1. Policy of full public disclosure of government transactions (1987 Constitution, Art. II, Sec. 28).
2. Right to information on matters of public concern (1987 Constitution, Art. III, Sec. 7).
3. Access to the records and books of account of the Congress (1987 Constitution, Art. VI, Sec. 20). **(2000 Bar)**
4. Submission of Statement of Assets, Liabilities, and Net worth (1987 Constitution, Art. XI, Sec. 17).
5. Access to information on foreign loans obtained or guaranteed by the government (1987 Constitution, Art. XII, Sec. 21).

NOTE: These provisions on public disclosures are intended to enhance the role of the citizenry in governmental decision-making as well as in checking abuse in government (*Valmonte v. Belmonte*, G.R. No. 74930, February 13, 1989).

Right of Parents to Rear their Children

The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government (1987 Constitution Sec. 12, Art. II)

NOTE: The rearing of children (*i.e.*, referred to as the "youth") for civic efficiency and the development of their moral character are characterized not only as parental rights, but also as parental duties. This means that parents are not only given the privilege of exercising their authority over their children; they are equally obliged to exercise this authority conscientiously. The duty aspect of this provision is a reflection of the State's independent interest to ensure that the youth would eventually grow into free, independent, and well-developed citizens of

this nation. For indeed, it is during childhood that minors are prepared for additional obligations to society. "[T]he duty to prepare the child for these [obligations] must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." "This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens." (*SPARK, Et. al. vs. Quezon City*, GR No. 225442, August 08, 2017).

Q: Three cities in Metro Manila passed ordinances that impose curfew on minors in their respective jurisdictions. Petitioners argue that the Curfew Ordinances are unconstitutional because they deprive parents of their natural and primary right in rearing the youth without substantive due process. Is the petitioners' contention proper?

A: NO. While parents have the primary role in child-rearing, it should be stressed that "when actions concerning the child have a relation to the public welfare or the well-being of the child, the State may act to promote these legitimate interests. Thus, in cases in which harm to the physical or mental health of the child or to public safety, peace, order, or welfare is demonstrated, these legitimate state interests may override the parents' qualified right to control the upbringing of their children.

As our Constitution itself provides, the State is mandated to support parents in the exercise of these rights and duties. State authority is therefore, not exclusive of, but rather, complementary to parental supervision.

It should be emphasized that the Curfew Ordinances apply only when the minors are not— whether actually or constructively— accompanied by their parents. This serves as an explicit recognition of the State's deference to the primary nature of parental authority and the importance of parents' role in child-rearing. Parents are effectively given unfettered authority over their children's conduct during curfew hours when they are able to supervise them. Thus, in all actuality, the only aspect of parenting that the Curfew Ordinances affects is the parents' prerogative to allow minors to remain in public places without parental accompaniment during the curfew hours (*SPARK, Et. al. vs. Quezon City*, GR No. 225442, August 8, 2017).

Incorporation Clause

The Philippines adopts the generally accepted principles of international law as part of the law of the land (1987 Constitution, Art. 2, Sec. 2). **(See discussion under Public International Law)**



Doctrine of Incorporation vs. Doctrine of Transformation

BASIS	DOCTRINE OF INCORPORATION	DOCTRINE OF TRANSFORMATION
Definition	Rules of International Law form part of the law of the land and no legislative action is required to make them applicable in a country. Thus, the Philippines is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws.	Generally accepted rules of international law are not <i>per se</i> binding upon the State but must first be embodied in legislation enacted by the lawmaking body and so transformed into municipal law.

NOTE: The fact that the international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere (*Philip Morris, Inc. v. CA, G.R. No. 91332, July 16, 1993*).

Sovereignty

Supreme and uncontrollable power inherent in a State by which the State is governed.

Characteristics of Sovereignty

1. Permanent;
2. Exclusive;
3. Comprehensive;
4. Absolute;
5. Indivisible;
6. Inalienable; and
7. Imprescriptible (*Laurel v. Misa, G.R. No. L-409, Jan. 30, 1947*).

Sovereignty: Imperium vs. Dominium

BASIS	IMPERIUM	DOMINIUM
Definition and Extent	The State's authority to govern as embraced in the concept of	Capacity of the state to own or acquire property.

	sovereignty; includes passing laws governing a territory, maintaining peace and order over it, and defeating it against foreign invasion.	
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(*Lee Hong Hok v. David, G.R. No. L-30389, Dec. 27, 1972*)

NOTE: Sovereignty is deemed absolute, subject to restrictions and limitations.

Doctrine of Auto Limitation

While sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly as a member of the family of nations.

By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* – international agreements must be performed in good faith.

A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties. By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their state power in exchange for greater benefits granted by or derived from a convention or pact.

The sovereignty of a state therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture: (1) limitations imposed by the very nature of membership in the family of nations and (2) limitations imposed by treaty stipulations (*Tañada v. Angara, G.R. No. 118295, May 2, 1997*).

Constitutional provisions which ensure civilian supremacy

1. By the installation of the President, the highest civilian authority, as the commander-in-chief of all the armed forces of the Philippines (1987 Constitution, Art. VII, Sec. 18).
2. Through the requirement that members of the AFP swear to uphold and defend the Constitution, which is the fundamental law of



a civil government (1987 Constitution, Art. XVI, Sec. 5, Par. 1).

NOTE: By civilian supremacy, it is meant that civilian authority is, at all times, supreme over the military. (2003, 2006, 2009 Bar)

Mandatory rendition of military services to defend the State

One cannot avoid compulsory military service by invoking one's religious convictions or by saying that he has a sick father and several brothers and sisters to support. Accordingly, the duty of government to defend the State cannot be performed except through an army. To leave the organization of an army to the will of the citizens would be to make this duty to the Government excusable should there be no sufficient men who volunteer to enlist therein. The right of the Government to require compulsory military service is a consequence of its duty to defend the State and is reciprocal with its duty to defend the life, liberty, and property of the citizen (*People v. Zosa, G.R. No. L-45892-93, July 13, 1938*).

Separation of Church and State

Provisions of the Constitution that support the principle of separation of Church and State:

1. *Art. III, Sec. 5*: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."
2. *Art. VI, Sec. 5[2]*: "The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sections as may be provided by law, except the religious sector."
3. *Art. IX-CI, Sec. 2[5]*: "Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their

goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration. Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law."

XPNS to the principle are the following provisions of the Constitution:

1. *Art. VI, Sec. 28[3]*: "Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation."
2. *Art. VI, Sec. 29[2]*: "No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium." (1992, 1997 Bar)
3. *Art. XIV, Sec. 3[3]*: "At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government."
4. *Art. XIV, Sec. 4[2]*: "Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions."

Theories on the separation of church and state:

1. *Separation Standard* - May take the form of either (a) strict separation or (b) the tamer version of strict neutrality, or what Justice



Carpio refers to as the second theory of governmental neutrality.

- a. *Strict Separationist* – The establishment clause was meant to protect the State from the church, and the State's hostility towards religion allows no interaction between the two.
 - b. *Strict Neutrality Approach* – It is not hostility towards religion, but a strict holding that religion may not be used as a basis for classification for purposes of governmental action, whether the action confers rights or privileges or imposes duties or obligations. Only secular criteria may be the basis of government action. It does not permit; much less require accommodation of secular programs to religious belief.
2. *Benevolent Neutrality Approach (2016 Bar)*– The “wall of separation” is meant to protect the church from the State. It believes that with respect to governmental actions, accommodation of religion may be allowed, not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance (*Estrada v. Escritor, A.M. No. P-02-1651, June 22, 2006*).

NOTE: In the Philippine context, the Court categorically ruled that, “the Filipino people, in adopting the Constitution, manifested their adherence to the **benevolent neutrality approach** that requires accommodations in interpreting the religion clauses” (*Estrada v. Escritor, ibid.*).

Kinds of accommodation that result from free exercise claim

1. *Mandatory* – Those which are found to be constitutionally compelled, *i.e.* required by the Free Exercise Clause;
2. *Permissive* – Those which are discretionary or legislative, *i.e.* not required by the Free Exercise Clause; and
3. *Prohibited* – Those which are prohibited by the religion clauses.

NOTE: Based on the foregoing, and after holding that the Philippine Constitution upholds the Benevolent Neutrality Doctrine which allows for accommodation, the Court laid down the rule that in dealing with cases involving purely conduct based on religious belief, it shall adopt the **Strict-Compelling State interest test** because it is most in line with the benevolent neutrality-accommodation.

Difference between Mandatory accommodation, Permissive accommodation and Prohibited accommodation

MANDATORY ACCOMMODATION	PERMISSIVE ACCOMMODATION	PROHIBITED ACCOMMODATION
Basis and Action Taken		
Based on the premise that when religious conscience conflicts with a government obligation or prohibition, the government sometimes may have to give way. This accommodation occurs when all three conditions of the compelling State interest test are met.	Means that the state may, but is not required to, accommodate religious interests.	Results when the Court finds no basis for a mandatory accommodation, or it determines that the legislative accommodation runs afoul of the establishment or the free exercise clause. In this case, the Court finds that establishment concerns prevail over potential accommodation interests.

NOTE: The purpose of accommodations is to remove a burden on, or facilitate the exercise of, a person's or institution's religions.

Q: In his letters addressed to Chief Justice Puno, Valenciano reported that the basement of the Hall of Justice of Quezon City had been converted into a Roman Catholic Chapel, complete with offertory table, images of Catholic religious icons, a canopy, an electric organ, and a projector. Valenciano believed that such practice violated the constitutional provision on the separation of Church and State and the constitutional prohibition against the appropriation of public money or property for the benefit of a sect, church, denomination, or any other system of religion. Valenciano also prayed that rules be promulgated by the Court to put a stop to the holding of Catholic masses, or any other religious rituals, at the QC Hall of Justice and in all other halls of justice in the country.

(a) Does the holding of masses at the QC Hall of Justice violate the principle of separation of Church and State?

(b) Was there a violation against appropriation of public money or property for the benefit of



any sect, church, denomination, sectarian institution, or system of religion?

A:

a) NO. Allowing the citizens to practice their religion is not equivalent to a fusion of Church and State. The State adopts a policy of accommodation as a recognition that some governmental measures may not be imposed on a certain portion of the population for these measures are contrary to their religious beliefs. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment.

The holding of Catholic masses at the basement of the QC Hall of Justice is merely a case of accommodation. First, there is no law, ordinance or circular issued by any duly constitutive authorities expressly mandating that judiciary employees attend the Catholic masses at the basement. Second, when judiciary employees attend the masses to profess their faith, it is at their own initiative as they are there on their own free will and volition, without any coercion from the judges or administrative officers. Third, no government funds are being spent because the lightings and airconditioning continue to be operational even if there are no religious rituals there. Fourth, the basement has neither been converted into a Roman Catholic chapel nor has it been permanently appropriated for the exclusive use of its faithful. Fifth, the allowance of the masses has not prejudiced other religions.

b) NO. The basement of the QC Hall of Justice is not appropriated, applied or employed for the sole purpose of supporting the Roman Catholics.

The basement is also being used as a public waiting area for most of the day and a meeting place for different employee organizations. The use of the area for holding masses is limited to lunch break period from twelve (12) o'clock to one (1) o'clock in the afternoon. The masses run for just a little over thirty (30) minutes. It is, therefore, clear that no undue religious bias is being committed when the subject basement is allowed to be temporarily used by the Catholics to celebrate mass, as the same area can be used by other groups of people and for other purposes. Thus, the basement of the QC Hall of Justice has remained to be a public property devoted for public use because the holding of Catholic masses therein is a mere incidental consequence of its primary purpose.

What the law prohibits the use of public money or property for the sole purpose of benefiting or supporting any church. The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a

particular church. It does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general. (*Re: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City, A.M. No. 10-4-19-SC, March 7, 2017*)

SEPARATION OF POWERS

Doctrine of Separation of Powers(2003, 2009, 2010 Bar)

Legislation belongs to the Congress, implementation to the executive, and settlement of legal controversies and adjudication of rights to the judiciary. Each is therefore prevented from invading the domain of the others.

Purposes of Separation of Powers

1. Secure action;
2. Forestall over-action;
3. Prevent despotism; and
4. Obtain efficiency.

NOTE: To prevent the concentration of authority in one person or group of persons that might lead to irreparable error or abuse in its exercise to the detriment of republican institutions. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy.

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and supreme in matters falling within its own constitutionally allocated sphere.

Powers vested in the three branches of government

EXECUTIVE	LEGISLATIVE	JUDICIARY
Implementation of laws (Power of the sword)	Making of laws (power of the purse)	Interpretation of laws (Power of judicial review)

NOTE: Legislative power is given to the legislature whose members hold office for a fixed term (*Sec. 1, Art. VI*); Executive power is given to a separate Executive who holds office for a fixed term (*Sec. 1, Art. VII*); and Judicial power is held by an independent Judiciary(*Sec. 1, Art. VIII*).



Q: A group of losing litigants in a case decided by the SC filed a complaint before the Ombudsman charging the Justices with knowingly and deliberately rendering an unjust decision in utter violation of the penal laws of the land. Can the Ombudsman validly take cognizance of the case?

A: NO. Pursuant to the principle of separation of powers, the correctness of the decisions of the SC as final arbiter of all justifiable disputes is conclusive upon all other departments of the government; the Ombudsman has no power to review the decisions of the SC by entertaining a complaint against the Justices of the SC for knowingly rendering an unjust decision (*In re: Laureta, G.R. No. L-68635, May 14, 1987*).

Q: May the RTC or any court prohibit a committee of the Senate like the Blue Ribbon Committee from requiring a person to appear before it when it is conducting investigation in aid of legislation?

A: NO. The RTC or any court may not do so because that would be violative of the principle of separation of powers. The principle essentially means that legislation belongs to Congress, execution to the Executive and settlement of legal controversies to the Judiciary. Each is prevented from invading the domain of the others (*Senate Blue Ribbon Committee v. Majaducon, G.R. No. 136760, July 29, 2003*).

Q: The Panel of Prosecutors issued a joint resolution based on the affidavits of Kenny Dalandag, charging several individuals with multiple murder in relation to the Maguindanao massacre. Kenny Dalandag was then admitted to the Witness Protection Program of the DOJ. Petitioner AndalAmpatuan, Jr., one of the principal suspects, wrote to respondent Secretary of Justice De Lima and Asst. Chief State Prosecutor Fadullon, requesting that Dalandag be included in the information for murder considering he already confessed his participation in the massacre. Respondent refused. Petitioner Ampatuan then filed a petition for *mandamus*. May the respondents be compelled by the writ of *mandamus* to charge Dalandag as an accused for multiple murder in relation to the Maguindanao massacre even if he is under the Witness Protection Program?

A: NO. Consistent with the principle of separation of powers enshrined in the Constitution, the Court deems it a sound judicial policy not to interfere in the conduct of preliminary investigations, and to allow the Executive Department, through the Department of Justice, exclusively to determine what constitutes sufficient evidence to establish probable cause for the prosecution of supposed

offenders. By way of exception, however, judicial review may be allowed where it is clearly established that the public prosecutor committed grave abuse of discretion, that is, when he has exercised his discretion "in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law."

Kenny Dalandag who admitted his participation in the commission of the Maguindanao massacre was no hindrance to his admission into the Witness Protection Program as a state witness, for all that was necessary was for him to appear not the most guilty. Accordingly, he could not anymore be charged for his participation in the Maguindanao massacre, as to which his admission operated as an acquittal, unless he later on refuses or fails to testify in accordance with the sworn statement that became the basis for his discharge against those now charged for the crimes (*Ampatuan, Jr. v. De Lima, G.R. No. 197291, April 3, 2013*).

Q: Pres. Benigno Aquino III signed E.O. No. 1 establishing the Philippine Truth Commission, a special body to investigate reported cases of graft and corruption allegedly committed during the Arroyo administration. Is E.O. No. 1 constitutional?

A: NO. The President has no power to create a public office. It is not shared by Congress with the President, until and unless Congress enacts legislation that delegates a part of the power to the President, or any other officer or agency. It is already settled that the President's power of control can only mean the power of an officer to alter, modify, or set aside what a subordinate officer had done in the performance of his duties, and to substitute the judgment of the former for that of the latter. As such, the creation by the President of a public office like the Truth Commission, without either a provision of the Constitution or a proper law enacted by Congress authorizing such creation, is not an act that the power of control includes (*Biraogo v. The Philippine Truth Commission, G.R. No. 192935, 7 December 2010, Bersamin, J. separate opinion*).

Q: A provision in the 2014 General Appropriations Act (GAA) granted the legislators lump-sum allocations and gave them post-enactment measures, such as project identification, execution and operation aspects of the identified projects. Is such provision violative of the principle of separation of powers?



A: YES. There is a violation of the principle when there is impermissible (a) interference with and/or (b) assumption of another department's functions.

These post-enactment measures, which govern the areas of project identification, fund release and fund realignment are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Legislators have been, in one form or another, authorized to participate in "the various operational aspects of budgeting" in violation of the separation of powers principle.

From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional. Any post-enactment congressional measure should be limited to scrutiny and investigation. Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution (*Belgica v. Ochoa*, G.R. No. 208566, Nov. 19, 2013).

Q: Amog was elected Congressman. Before the end of her first year in office, she inflicted physical injuries on a colleague, Camille Gonzales, in the course of a heated debate. Charges were filed in court against her as well as in the House Ethics Committee. Later, the HoR, dividing along party lines, voted to expel her. Claiming that her expulsion was railroaded and tainted by bribery, she filed a petition seeking a declaration by the SC that the House gravely abused its discretion and violated the Constitution. She prayed that her expulsion be annulled and that she should be restored by the Speaker to her position as Congressman. Is AviAmog's petition before the Supreme Court justiciable?

A: NO. The petition is not justiciable because as stated in *Alejandrino v. Quezon, et al.* (46 Phil. 83), the Supreme Court held that it could not compel the Senate to reinstate a Senator who assaulted another Senator and was suspended for disorderly behavior, because it could not compel a separate and co-equal department to take any particular action. In *Osmeña v. Pendatun* (109 Phil. 863), it was held that the Supreme Court could not interfere with the suspension of a Congressman for disorderly behavior, because the House of Representatives is the judge of what constitutes disorderly behavior. The assault of a fellow Senator constitutes disorderly behavior. However, under Sec. 1, Art. VIII of the 1987 Constitution, the Supreme Court may inquire whether or not the decision to expel

AviAmog is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Q: Joey Tribbiani was convicted of estafa. When his case reached the Supreme Court, some Justices proposed to alter the penalties provided for under RPC on the basis of the ratio of P1.00 to P100.00, believing that it is not fair to apply the range of penalties, which was based on the value of money in 1932, to crimes committed at present. However, other justices opposed the said proposal for it amounts to judicial legislation. Is the opposition correct?

A: YES. The opposition is correct because the Court cannot modify the said range of penalties because that would constitute judicial legislation. What the legislature's perceived failure in amending the penalties provided for in the said crimes cannot be remedied through this Court's decisions, as that would be encroaching upon the power of another branch of the government.

Verily, the primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms. The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose. Succinctly put, the Court should shy away from encroaching upon the primary function of a co-equal branch of the Government; otherwise, this would lead to an inexcusable breach of the doctrine of separation of powers by means of judicial legislation (*Corpuz v. People*, G.R. No. 180016, April 29, 2014).

Principle of Blending of Powers

Refers to an instance when powers are not confined exclusively within one department but are assigned to or shared by several departments.

Examples of the Blending of Powers

- Power of appointment which can be exercised by each department and be rightfully exercised by each department over its own administrative personnel;
- General Appropriations Law – President prepares the budget which serves as the basis of the bill adopted by Congress;
- Amnesty granted by the President requires the concurrence of the majority of all the members of the Congress; and



- d. Power of the COMELEC to deputize law-enforcement agencies and instrumentalities of the government for the purpose of ensuring free, orderly, honest, peaceful and credible elections in accordance with the power granted to it by the Constitution to enforce and administer all laws and regulations relative the conduct of elections [Art. IX-C, Sec. 2(1)] (*Concurring and Dissenting Opinion of Justice Puno, Macalintal v. COMELEC, G.R. No. 157013, July 10, 2003*).

CHECKS AND BALANCES

Principle of Checks and Balances

Allows one department to resist encroachments upon its prerogatives or to rectify mistakes or excesses committed by the other departments.

Executive check on the other two branches

EXECUTIVE CHECK	
Legislative	Judiciary
Through its veto power	<ul style="list-style-type: none"> - Through its power of pardon, it may set aside the judgment of the judiciary. - Also by power of appointment – power to appoint members of the Judiciary.

Legislative check on the other two branches

LEGISLATIVE CHECK	
Executive	Judiciary
Override the veto of the President	Revoke or amend the decisions by either: <ul style="list-style-type: none"> - Enacting a new law - Amending the old law, giving it certain definition and interpretation different from the old.
Reject certain appointments made by the president	Impeachment of SC members
Revoke the proclamation of martial law or suspension of the privilege of the writ of habeas corpus	Define, prescribe, apportion jurisdiction of lower courts: <ul style="list-style-type: none"> - Prescribe the qualifications of lower court judges - Impeachment - Determination of

	salaries of judges.
Impeachment	
Determine the salaries of the president or vice president	

Judicial check on the other two branches

It may declare (through the SC as the final arbiter) the acts of both the legislature and executive as unconstitutional or invalid so long as there is grave abuse of discretion amounting to lack or excess of jurisdiction.

Test to determine whether a given power has been validly exercised by a particular department:

GR.: Whether the power has been constitutionally conferred upon the department claiming its exercise.

XPN: Doctrine of Necessary Implication (2010 Bar)

Exercise of the power may be justified in the absence of an express conferment because the grant of express power carried with it all other powers that may be reasonably inferred from it.

Q: An appropriations law granting the legislators lump-sum funds in which they have full discretion on what project it would fund and how much the project would cost, was passed. Is such law unconstitutional?

A: YES.

1. It violated the **principle of separation of powers** - Insofar as it has allowed legislators to wield, in varying gradations, non-oversight, post-enactment authority in vital areas of budget execution.

2. It violated the **principle of non-delegability of legislative power** - insofar as it has conferred unto legislators the power of appropriation by giving them personal, discretionary funds from which they are able to fund specific projects which they themselves determine.

3. Denied the **President's power to veto items** - insofar as it has created a system of budgeting wherein items are not textualized into the appropriations bill, it has flouted the **prescribed procedure of presentment**.

4. Impaired **public accountability** - insofar as it has diluted the effectiveness of congressional oversight by giving legislators a stake in the affairs of budget



execution, an aspect of governance which they may be called to monitor and scrutinize.

5. Subverted genuine **local autonomy** - insofar as it has authorized legislators, who are national officers, to intervene in affairs of purely local nature, despite the existence of capable local institutions.

6. Transgressed the **principle of non-delegability** - insofar as it has conferred to the President the power to appropriate funds intended by law for energy-related purposes only to other purposes he may deem fit as well as other public funds under the broad classification of "priority infrastructure development projects" (*Belgica v. Ochoa*, G.R. No. 208566, Nov. 19, 2013).

DELEGATION OF POWERS

Non-delegation of power

GR: A delegated power cannot be re-delegated (*Potestas delegata non delegari potest*).

NOTE: Delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another. A further delegation of such power, unless permitted by the sovereign power, would constitute a negation of this duty in violation of the trust reposed in the delegate mandated to discharge it directly.

XPNS: Permissible delegations: **(PETAL)**

1. Delegation to the **People** through initiative and referendum (*1987 Constitution, Art. VI, Sec. 1*).
2. Emergency powers delegated by Congress to the President [*1987 Constitution, Art. VI, Sec. 23(2)*].

Requisites:

- a. There must be war or other national emergency;
 - b. The delegation is for a limited period only;
 - c. Delegation is subject to restrictions as Congress may prescribe; and
 - d. Emergency powers must be exercised to carry a national policy declared by Congress.
3. Congress may delegate **Tariff** powers to the President [*1987 Constitution, Art. VI, Sec. 28 (2)*].

NOTE: The Tariff and Customs Code is the enabling law that grants such powers to the President. Power to impose tariffs in the first place is not inherent in the President but arises only from congressional grant.

4. Delegation to **Administrative bodies**– Also known as the **power of subordinate legislation/ quasi-legislative powers**.

NOTE: Congress can only delegate rule-making power to administrative agencies. It is the authority vested by Congress to the administrative bodies to "fill in the details" which Congress cannot provide due to lack of opportunity or competence. This includes the making of supplementary rules and regulations. They have the force and effect of law.

5. Delegation to **Local Governments** – the grant of authority to prescribe local regulations.

Tests to determine whether the delegation of legislative power is valid (2005, 2016 Bar)

- a. **Completeness Test** – The law must be complete in all essential terms and conditions when it leaves the legislature so that there will be nothing left for the delegate to do when it reaches him except to enforce it.
- b. **Sufficient Standard Test** – fixes a standard, the limits of which are sufficiently determinate or at least determinable to which the delegate must conform in the performance of his functions (*Defensor-Santiago v. COMELEC*, G.R. No. 127325, March 19, 1997).

NOTE: The Sufficient Standard Test maps out the boundaries of the delegate's authority and indicating the circumstances under which it is to be pursued and effected. Its purpose is to prevent total transference of legislative power.

Invalid delegation of legislative power

If there are gaps that will prevent its enforcement, the delegate is given the opportunity to step into the shoes of the legislature and exercise discretion in order to repair the omissions.

NOTE: This is tantamount to an abdication of power in favor of the delegate, which is in violation of the doctrine of separation of powers.

Q: A law, which delegated some appropriation powers to the President, was passed. The law contains provisions such as "and for such other purposes as may be hereafter directed by the President" and "to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines." Are the provisions valid?



A: NO. These provisions constitute an undue delegation of legislative power insofar as it does not lay down a sufficient standard to adequately determine the limits of the President's authority with respect to the purpose for which the law may be used (**sufficient standard test**). It gives the President wide latitude to use the funds for any other purpose he may direct and, thus, allows him to unilaterally appropriate public funds beyond the purview of the law.

The law does not supply a definition of "priority infrastructure development projects" and hence, leaves the President without any guideline to construe the same. Thus, the phrase "to finance the priority infrastructure development projects", being too broad, must be stricken down as unconstitutional since it lies independently unfettered by any sufficient standard of the delegating law (*Belgica v. Ochoa*, G.R. No. 208566, November 19, 2013).

NOTE: Having established that the BSP Monetary Board is indeed a quasi-judicial body exercising quasi-judicial functions, then its decision in MB Resolution No. 1139 cannot be the proper subject of declaratory relief (*MB v. Philippine Veterans Bank*, G. R. No. 189571, January 21, 2015).

Q: Rosalie Jaype-Garcia filed a petition before the RTC of Bacolod City for the issuance of a Temporary Protection Order against her husband, Jesus Garcia, pursuant to RA 9262. She claimed to be a victim of physical abuse and emotional, psychological, and economic violence. During the pendency of the civil case, Jesus Garcia filed a petition before the SC, alleging that RA 9262 is unconstitutional because of undue delegation of judicial power to barangay officials by allowing them to issue a Barangay Protection Order. Is RA 9262 unconstitutional for undue delegation of judicial power to barangay officials?

A: NO. There is no undue delegation of judicial power to *barangay* officials with respect to the authority to issue BPO. The BPO issued by the *Punong Barangay* or, in his unavailability, by any available *Barangay Kagawad*, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (b) threatening to cause the woman or her child physical harm. Such function of the *Punong Barangay* is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the *barangay*" (*Garcia v. Drilon*, G.R. No. 179267, June 25, 2013).

President's authority to declare a state of national emergency vs. President's authority to exercise emergency powers

BASIS	DECLARE A STATE OF NATIONAL EMERGENCY	EXERCISE EMERGENCY POWERS
<i>Source of Authority</i>	Granted by the Constitution, no legitimate objection can be raised.	Requires a delegation from Congress. (<i>David v. GMA</i> G.R. No. 171396, May 3, 2006) NOTE: Not mandatory on Congress.

FORMS OF GOVERNMENT

Classifications of government

1. *As to the centralization of control*
 - a. *Unitary government* – One in which the control of national and local, internal and external, affairs is exercised by the central or national government;
 - b. *Federal government* – One in which the powers of the government are divided between two sets of organs, one for national affairs and the other for local affairs, each organ being supreme within its own sphere; consists of autonomous local government units merged into a single State, with the national government exercising a limited degree of power over the domestic affairs but generally full discretion of the external affairs of the State.
2. *As to the existence or absence of title and/or control*
 - a. *De jure* – Has a rightful title but no power or control, one that is established of a legitimate sovereign.
 - b. *De facto* – Actually exercises power or control but without legal title (*Lawyers League for a Better Philippines v. Aquino*, G.R. No. 73748, May 22, 1986).

Kinds of *de facto* government

- i. *De facto proper* – Government that gets possession and control of, or usurps, by force or by the voice of the majority, the rightful legal government and maintains itself against the will of the latter;



- ii. *Government of paramount force* – Established and maintained by military forces who invade and occupy a territory of the enemy in the course of war; and
- iii. *Independent government* – Established by the inhabitants of the country who rise in insurrection against the parent State (*Co Kim Cham v. Valdez Tan Keh, G.R. No. L- 5, September 17, 1945*).

EDSA 1 vs. EDSA 2

BASIS	EDSA 1	EDSA 2
Nature	Exercise of the people power of revolution which overthrew the whole government.	Exercise of the people power of freedom of speech and freedom of assembly to petition the government for redress of grievances which only affected the office of the President.
Constitutionality	Extra-constitutional. Legitimacy of the new government that resulted cannot be the subject of judicial review.	Intra-constitutional. Resignation of sitting President that it caused and succession of the VP are subject to judicial review.
As to issue(s) raised	Political question	Legal question
Source of Authority	Cory Aquino government was installed through a direct exercise of the power of the Filipino people “in defiance of	The oath that Arroyo took at the EDSA Shrine is the oath under the 1987 Constitution. In her oath, she categorically swore to preserve and defend the

	the provisions of the 1973 Constitution, as amended.”	1987 Constitution.
As to character	Revolutionary in character.	Not revolutionary in character.

(*Estrada v. Desierto, G.R. Nos. 146710-15, March 2, 2001*)

Constitutional provisions which guarantee People Power

1. Guarantees the right of the people to peaceably assemble and petition the government for redress of grievances (*1987 Constitution, Art. III, Sec. 4*).
2. Requires Congress to pass a law allowing the people to directly propose and enact laws through initiative and to approve or reject any act or law or part of it passed by Congress or a local legislative body (*1987 Constitution, Art. VI, Sec. 32*).
 - a) Provides that the right of the people and their organizations to participate at all levels of social, political, and economic decision-making shall not be abridged and that the State shall, by law, facilitate the establishment of adequate consultation mechanisms (*1987 Constitution, Art. XIII, Sec. 16*).
 - b) Provides that subject to the enactment of an implementing law, the people may directly propose amendments to the Constitution through initiative (*1987 Constitution, Art. XVII, Sec. 2*).
3. *As to the concentration of powers in a government branch*
 - a. *Presidential government*– There is separation of executive and legislative powers

NOTE: The principal identifying feature of a presidential form of government is the doctrine of separation of powers. In presidential system, the President is both the head of State and the head of government.

- b. *Parliamentary government* – There is fusion of both executive and legislative powers in Parliament, although the actual exercise of the executive powers is vested



in a Prime Minister who is chosen by, and accountable to the Parliament.

Essential characteristics of a parliamentary form of government

1. The members of the government or cabinet or the executive arm are, as a rule, simultaneously members of the legislature;
2. The government or cabinet consisting of the political leaders of the majority party or of a coalition who are also members of the legislature, is in effect a committee of the legislature;
3. The government or cabinet has a pyramidal structure at the apex of which is the Prime Minister or his equivalent;
4. The government or cabinet remains in power only for so long as it enjoys the support of the majority of the legislature; and
5. Both the government and the legislature are possessed of control devices which each can demand of the other immediate political responsibility. In the hands of the legislature is the vote of non-confidence (censure) whereby government may be ousted. In the hands of the government is the power to dissolve the legislature and call for new elections.

Functions of the Government

1. *Constituent* – Mandatory for the government to perform because they constitute the very bonds of society.
2. *Ministrant* – Intended to promote the welfare, progress and prosperity of the people.

NOTE: Distinction of function is no longer relevant because the Constitution obligates the State to promote social justice and has repudiated the *laissez faire* policy (*ACCFA v. Federation of Labor Unions, G.R. No. L-21484, November 29, 1969*).



LEGISLATIVE DEPARTMENT

WHO MAY EXERCISE LEGISLATIVE POWER

The following may exercise legislative power

1. Congress
2. Regional/Local Government Units
3. The People through initiative and referendum.
(2002 Bar)

Limitations on the legislative power of Congress

1. Substantive: limitations on the content of laws.
2. Procedural: limitations on the manner of passing laws.
3. Congress cannot pass irrepealable laws.
4. Congress, as a general rule, cannot delegate its legislative power.

XPN: See *Delegation of Legislative Powers*.

Q: Is the supermajority vote requirement under RA 9054, the second Organic Act of ARMM which reset the regular elections for the ARMM regional officials to the second Monday of September 2001 unconstitutional by giving it a character of an irrepealable law?

A: YES. The supermajority (2/3) voting requirement required under Sec. 1, Art. XVII of RA 9054 (second Organic Act of ARMM) has to be struck down for giving said law the character of an irrepealable law by requiring more than what the Constitution demands.

Sec. 16(2), Art. VI of the Constitution provides that a "majority of each House shall constitute a quorum to do business." In other words, as long as majority of the members of the House of Representatives or the Senate are present, these bodies have the *quorum* needed to conduct business and hold session. Within a quorum, a vote of majority is generally sufficient to enact laws or approve acts.

In contrast, Sec. 1, Art. XVII of RA 9054 requires a vote of no less than 2/3 of the Members of the House of Representatives and of the Senate, voting separately, in order to effectively amend RA 9054. Clearly, this requirement is higher than what the Constitution requires for the passage of bills, and served to restrain the plenary powers of Congress to amend, revise or repeal the laws it had passed.

While a supermajority is not a total ban against repeal, it is a limitation in excess of what the Constitution requires on the passage of bills and is constitutionally obnoxious because it significantly constricts the future legislators' room for action and flexibility (*Abas Kida v. Senate, G.R. No. 196271, Oct. 18, 2011*).

NOTE: Every legislative body may modify or abolish the acts passed by itself or its predecessors. This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes (*Abas Kida v. Senate, ibid.*).

Classes of legislative power

1. *Original:* Possessed by the people in their sovereign capacity i.e. initiative and referendum.
2. *Delegated:* Possessed by Congress and other legislative bodies by virtue of the Constitution.
3. *Constituent:* The power to amend or revise the Constitution.
4. *Ordinary:* The power to pass ordinary laws.

HOUSES OF CONGRESS

Composition of Congress

The Philippine Congress is bicameral in nature, composed of:

1. Senate
2. House of Representatives
 - a. District representatives
 - b. Party-list representatives

Composition, qualifications, and term of office of members of Congress

SENATE	HOUSE OF REPRESENTATIVES
Composition	
24 Senators (elected at large by qualified voters of the Philippines as may be provided by law)	Not more than 250 members, unless otherwise fixed by law NOTE: Congress itself may by law increase the composition of the HoR
Qualifications (1993, 1999 Bar)	
<ol style="list-style-type: none"> 1. Natural-born citizen of the Philippines; 2. At least 35 years of age on the day of election; 3. Able to read and write; 4. A registered voter; 5. Resident of the Philippines for not less than 2 years immediately preceding the day of election. (<i>Art. VI, Sec. 3</i>) 	<ol style="list-style-type: none"> 1. Natural-born citizen of the Philippines; 2. At least 25 years of age on the day of election XPN: In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his
NOTE: Enumeration is	



exclusive	<p>term shall be allowed to continue in office until the expiration of his term. (RA No. 7941, Sec. 9 (2))</p> <p>3. Able to read and write;</p> <p>4. Except the party-list representatives, a registered voter in the district in which he shall be elected;</p> <p>5. Resident thereof for a period of not less than 1 year immediately preceding the day of the election (Art. VI, Sec. 6).</p> <p>NOTE: Enumeration is exclusive.</p>
Term of office (2001 Bar)	
<p>6 years, which shall commence, unless otherwise provided by law, at noon on the 30th day of June next following their election.</p> <p><i>Term limit:</i> Not more than 2 consecutive terms.</p>	<p>3 years, which shall begin, unless otherwise provided by law, at noon on the 30th day of June next following their election.</p> <p><i>Term limit:</i> Not more than 3 consecutive terms.</p>

In *Imelda Romualdez-Marcos v. COMELEC*, the Court upheld the qualification of Mrs. Imelda Romuladez-Marcos (IRM) despite her own declaration in her certificate of candidacy that she had resided in the district for only seven (7) months, because of the following:

1. A minor follows the domicile of his parents; Tacloban became IRM's domicile of origin by operation of law when her father brought the family to Leyte;
2. Domicile of origin is lost only when:
 - a. there is actual removal or change of domicile
 - b. a bona fide intention of abandoning the former residence and establishing a new one
 - c. acts which correspond with the purpose
3. The wife does not automatically gain the husband's domicile because the term "residence" in Civil Law does not mean the same thing in Political Law; when IRM married Marcos in 1954, she kept he domicile of origin and merely gained a new home, not a *domicilium necessarium* (necessary domicile);
4. Even assuming that she gained a new domicile after her marriage and acquired the right to choose a new one only after her husband dies,

her acts following her return to the country clearly indicates that she chose Tacloban, her domicile of origin, as her domicile of choice (*Imelda Romualdez-Marcos v. COMELEC, G.R. No. 119976, Sept. 18, 1995*).

Disqualifications of members of Congress

SENATE	HOUSE OF REPRESENTATIVES
No Senator shall serve for more than two (2) consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected (Art. VI, Sec. 4).	all not serve for more than three (3) consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected (Art. VI, Sec. 7). (2001 Bar)
One who has been declared by competent authority as insane or incompetent	
<p>One who has been <i>sentenced by final judgment</i> for: (SIR-18-M)</p> <p>a. Subversion;</p> <p>b. Insurrection;</p> <p>c. Rebellion;</p> <p>d. Any offense for which he has been sentenced to a penalty of not more than 18 months; or</p> <p>e. A crime involving Moral turpitude, unless given plenary pardon o granted amnesty (<i>BP 881, Sec. 12</i>).</p>	

Expulsion of members of Congress

SENATORS	MEMBERS OF THE HOUSE OF REPRESENTATIVES
Expulsion by the Senate with the concurrence of 2/3 of all its members (1987 Constitution, Art. VI, Sec. 16, par. 3).	Expulsion by the House with the concurrence of 2/3 of all its members (1987 Constitution, Art. VI, Sec. 16, par. 3).

NOTE: The Congress cannot validly amend or otherwise modify these qualification standards, as it cannot disregard, evade, or weaken the force of a constitutional mandate, or alter or enlarge the Constitution (*Social Justice Society v. DDB and PDEA, G.R. Nos. 157870, 158633, 161658, Nov. 3, 2008*).

Rule on voluntary renunciation of office



Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected (1987 Constitution, Art. VI, Secs. 4 and 7).

Composition of the HoR (2002, 2007 Bar)

DISTRICT REPRESENTATIVE	PARTY-LIST REPRESENTATIVE
<i>As to who will vote</i>	
Elected by the constituents of his respective district.	Elected nationally (those garnering at least 2% of all votes cast for the party-list system are entitled to 1 seat, which is increased according to proportional representation, but is in no way to exceed 3 seats per organization.)
<i>Residency requirement</i>	
Must be a resident of his legislative district for at least 1 year immediately before the election.	No special residency requirement.
<i>Name in the ballot</i>	
Elected personally, by name.	Voted upon by party or organization.
<i>Effect of change in party affiliation</i>	
Does not lose seat	Loses his seat, in which case he will be substituted by another qualified person in the party or organization based on the list submitted to the COMELEC.
<i>As to vacancy</i>	
A special election may be held provided that the vacancy takes place at least 1 year before the next election.	A substitution will be made within the party, based on the list submitted to the COMELEC.
<i>Effect of defeat in the election</i>	
A district representative is not prevented from running again as a district representative if he lost in the previous election.	A party-list representative cannot sit if he ran and lost in the previous election.
<i>Effect of change in party affiliation to the upcoming elections</i>	
A change in affiliation	A change in affiliation

within months prior to election does not prevent a district representative from running under his new party.	within 6 months prior to election prohibits the party-list representative from listing as representative under his new party or organization.
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DISTRICT REPRESENTATIVES AND QUESTIONS OF APPORTIONMENT

District representatives

Those who are elected from legislative districts apportioned among the provinces, cities and the Metropolitan Manila area.

Apportionment of legislative districts

Legislative districts are apportioned among the provinces, cities, and the Metropolitan Manila area. They are apportioned in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio (1987 Constitution, Art. VI, Sec. 5).

Each **city** with a population of at least 250,000 shall have at least one representative. Each **province**, irrespective of the number of inhabitants, shall have at least one representative.

While *Sec. 5(3) of Art. VI* requires a city to have a minimum population of 250,000 to be entitled to one representative; it does not have to increase its population by another 250,000 to be entitled to an additional district (*Senator Aquino III v. COMELEC*, G.R. No. 189793, April 7, 2010).

NOTE: When one of the municipalities of a congressional district is converted to a city large enough to entitle it to one legislative district, the incidental effect is the splitting of district into two. The incidental arising of a new district in this manner need not be preceded by a census (*Tobias v. Abalos*, G.R. No. L-114783, Dec. 8, 1994).

Essence of apportionment

The underlying principle behind the rule for apportionment is the concept of equality of representation, which is a basic principle of republicanism. One man's vote should carry as much weight as the vote of every other man.

NOTE: The question of the validity of an apportionment law is a justiciable question (*Macia v. Comelec*, G.R. No. L-18684, Sept. 14, 1961).

Conditions for apportionment

1. Elected from legislative districts which are



apportioned in accordance with the number of inhabitants of each area and on the basis of a uniform and progressive ratio.

2. *Uniform*– Every representative of Congress shall represent a territorial unit with more or less a population of 250,000. All the other representatives shall have the same or nearly the same political constituency so much so that their votes will constitute the popular majority.
3. *Progressive* – It must respond to the change in times. The number of House representatives must not be so big as to be unwieldy(Let us say, there is a growth in population. The ratio may then be increased. From 250,000 constituents/1 representative it may be reapportioned to 300, 000 constituents/1 representative).
4. Each city with a population of at least 250,000 or each province, irrespective of number of inhabitants, shall at least have one representative.
GR: There must be proportional representation according to the number of their constituents/inhabitants.
XPN: In one city-one representative/one province-one representative rule.
5. Legislative districts shall be reapportioned by Congress within 3 years after the return of each census(*Senator Aquino III v. COMELEC, G.R. No. 189793, April 7, 2010*).

Manner of reapportionment

Reapportionment may be made thru a special law. The Constitution did not preclude Congress from increasing its membership by passing a law, other than a general reapportionment of the law. To hold that reapportionment can only be made through a general apportionment law, with a review of all the legislative districts allotted to each local government unit nationwide, would create an inequitable situation where a new city or province created by Congress will be denied legislative representation for an indeterminate period of time. Thus, a law converting a municipality into a highly-urbanized city automatically creates a new legislative district and, consequently, increases the membership of the HoR. (*Mariano, Jr. v. COMELEC, G.R. No. 118577, March 7, 1995*).

NOTE: The Constitution does not require a plebiscite for the creation of a new legislative district by a legislative reapportionment. It is required only for the creation of new local government units (*Bagabuyo v. COMELEC, 2008*). **(2015 Bar)**

Gerrymandering (2014 Bar)

Formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party. It is not allowed because the Constitution

provides that each district shall comprise, as far as practicable, contiguous, compact and adjacent territory.

Q: Congress enacted a law creating the legislative district of Malolos based on a certification of the demographic projection from NSO stating that by 2010, Malolos is expected to reach the population of 250,000, hence entitling it to one legislative district. Is the law valid?

A:NO. Congress cannot establish a new legislative district based on a projected population of the National Statistics Office (NSO) to meet the population requirement of the Constitution in the reapportionment of legislative districts.

A city that has attained a population of 250,000 is entitled to a legislative district only in the "immediately following election." In short, a city must first attain the 250,000 population, and thereafter such city shall have a district representative in the immediately following election. There is no showing in the present case that the City of Malolos has attained or will attain a population of 250,000, whether actual or projected, before May 10, 2010 elections. Thus, the City of Malolos is not qualified to have a legislative district of its own under Sec. 5(3), Art. VI of the 1987 Constitution and Sec 3 of the Ordinance appended to the 1987 Constitution (*Aldaba v. COMELEC, G.R. No. 188078, January 25, 2010*).

Q: Congress enacted a law reapportioning the composition of the Province of Camarines Sur and created legislative districts thereon. Frankie challenged the law because it runs afoul to the constitutional requirement that there must be at least a population of 250,000 to create a legislative district. COMELEC argued that the mentioned requirement does not apply to provinces. Is the 250,000 population standard an indispensable requirement for the creation of a legislative district in provinces?

A:NO. Sec. 5(3), Art. VI of the 1987 Constitution which requires 250,000 minimum population apply only for a city to be entitled to a representative but not for a province.

The provision draws a plain and clear distinction between the entitlement of a city to a district, on one hand, and the entitlement of a province to a district on the other. For while a province is entitled to at least a representative, with nothing mentioned about population, a city must first meet a population minimum of 250,000 in order to be similarly entitled (*Aquino and Robredo v. COMELEC, G.R. No. 189793, April 7, 2010*).

Q: Congress passed a law providing for the apportionment of a new legislative district in



CDO City. COMELEC subsequently issued a resolution implementing said law. Jovi now assails the resolution, contending that rules for the conduct of a plebiscite must first be laid down, as part of the requirements under the Constitution. According to Jovi, the apportionment is a conversion and division of CDO City, falling under Sec. 10 Art. X of the Constitution, which provides for the rule on creation, division, merger, and abolition of LGUs. Decide.

A: There is no need for a plebiscite. CDO City politically remains a single unit and its administration is not divided along territorial lines. Its territory remains whole and intact. Thus, Sec. 10, Art. X of the Constitution does not come into play.

No plebiscite is required for the apportionment or reapportionment of legislative districts. A legislative district is not a political subdivision through which functions of government are carried out. It can more appropriately be described as a representative unit that merely delineates the areas occupied by the people who will choose a representative in their national affairs. A plebiscite is required only for the creation, division, merger, or abolition of local government units (*Bagabuyo v. COMELEC*, G.R. No. 176970, December 8, 2008).

PARTY-LIST SYSTEM (RA No. 7941)

Party-list system

Mechanism of proportional representation in the election of representatives to the HoR from national, regional and sectoral parties or organizations or coalitions thereof registered with the COMELEC.

NOTE: Party-list representatives shall constitute 20% of the total number of representatives in the HoR including those under the party list (1987 Constitution, Art. VI, Sec. 5, par. 2). **(2007 Bar)**

Purpose of the party-list system

To make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of representative democracy (*Ang Bagong Bayani v. COMELEC*, G.R. No. 147589, June 26, 2001).

To democratize political power by giving political parties that cannot win in legislative district elections a chance to win seats in the HoR (*AtongPaglaum v. COMELEC*, G.R. 203766, April 2, 2013).

Different parties under the party-list system

No votes cast in favor of political party, organization or coalition shall be valid except for those registered under the party-list system.

1. *Political party*– Organized group of citizens advocating ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidate in public office (*Ang Bagong Bayani v. COMELEC and Bayan Muna v. COMELEC*, G.R. Nos. 147589 and 147613, June 26, 2001, June 26, 2001).
2. *National party* – Its constituency is spread over the geographical territory of at least a majority of regions.
3. *Regional party* – Its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.
4. *Sectoral party* – Organized group of citizens belonging to any of the following sectors: labor, peasant, fisherfolk, urban poor, indigenous, cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals, whose principal advocacy pertains to the special interest and concerns of their sectors.
5. *Sectoral Organization* – Refers to a group of citizens who share similar physical attributes or characteristics, employment, interest or concerns.
6. *Coalition* – Refers to an aggregation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.

Composition of the party-list system

1. National parties or organizations
2. Regional parties or organizations; and
3. Sectoral parties or organizations.

National and regional parties or organizations are different from sectoral parties or organizations. National and regional parties or organizations need not be organized along sectoral lines and need not represent any particular sector.

The party-list system is not solely for the benefit of sectoral parties

Sec. 5(1), Art. VI of the Constitution is crystal-clear that there shall be "a party-list system of registered national, regional, and sectoral parties or organizations." Had the framers of the 1987 Constitution intended national and regional parties to be at the same time sectoral, they would have stated "national and regional sectoral parties." They did not, precisely because it was never their intention to make the party-list system exclusively sectoral. National and regional parties are separate



from sectoral parties and need not be organized along sectoral lines nor represent any particular sector (*Atong Paglaum v. COMELEC, G.R. No. 203766, April 2, 2013*).

National and Regional parties need not represent the “marginalized and underrepresented” sectors

To require all national and regional parties under the party-list system to represent the “marginalized and underrepresented” is to deprive and exclude, by judicial fiat, ideology-based and cause-oriented parties from the party-list system. To exclude them from the party-list system is to prevent them from joining the parliamentary struggle, leaving as their only option armed struggle. To exclude them from the party-list system is, apart from being obviously senseless, patently contrary to the clear intent and express wording of the 1987 Constitution and RA 7941 (*Atong Paglaum v. COMELEC, ibid.*).

NOTE: Major political parties cannot participate in the party-list elections since they neither lack “well-defined political constituencies” nor represent “marginalized and underrepresented” sectors (*Atong Paglaum v. COMELEC, ibid.*).

However, the participation of major political parties may be through their sectoral wings, a majority of whose members are “marginalized and underrepresented” or lacking in “well-defined political constituencies” (*Atong Paglaum v. COMELEC, ibid.*).

Nomination of party-list representatives

Each registered party, organization or coalition shall submit to the COMELEC not later than 45 days before the election a list of names, not less than five (5), from which party-list representative shall be chosen in case it obtains the required number of votes.

Limitations

1. A person may be nominated in one (1) list only.
2. Only persons who have given their consent in writing may be names in the list
3. The list shall not include:
 - a. any candidate for any elective office; or
 - b. a person who has lost his bid for elective office in the immediately preceding election;
4. No change shall be allowed after the list shall have been submitted to the COMELEC.

XPN: Change may be allowed in cases where:

- a. nominees dies;
- b. withdraws in writing his nomination; or
- c. becomes incapacitated

NOTE: Incumbent sectoral representatives in the HoR who are nominated in the party-list system shall not be considered resigned.

Effect of Failure to Submit a List of Nominees

Failure to submit the list of five (5) nominees before the election warrants the cancellation of the party's registration (*Cocofed-Philippines Coconut Producers Federation, Inc. v. COMELEC, G.R. No. 207026, Aug. 6, 2013*).

Qualifications of a party-list nominee

1. Natural- born citizen of the Philippines;
2. Registered voter;
3. Resident of the Philippines for at least 1 year immediately preceding the day of the election;
4. Able to read and write;
5. *Bona fide* member of the party or organization which he seeks to represent at least 90 days preceding election day; and

NOTE: In the case of sectoral parties, to be a *bona fide* party-list nominee, one must either belong to the sector represented, or have a track record of advocacy for such sector (*Atong Paglaum v. COMELEC, ibid.*).

6. At least 25 years of age. (For youth sector nominees, at least 25 years and not more than 30 years of age)

NOTE: Any youth representative who attains the age of 30 during his term shall be allowed to continue in office until the expiration of his term.

Disclosure of Names of Party-List Nominees

The COMELEC has a constitutional duty to disclose and release the names of the nominees of the party-list groups, in accordance with Sec. 7, Art. III of the 1987 Constitution on the right of the people to information on matters of public concern as complemented by the policy of full disclosure and transparency in Government (*Bantay RA 7941 v. COMELEC, G.R. No. 177271, G.R. No. 177314, May 4, 2007*).

Guidelines in determining who may participate in the party-list elections

1. **Three different groups** may participate:
 - a. National;
 - b. Regional; and
 - c. Sectoral parties or organizations.
2. National parties or organizations and regional parties or organizations **do not need to organize along sectoral lines and do not need to represent any “marginalized and**



underrepresented" sector.

3. All political parties must **register** under the party-list system and **do not field candidates in legislative district elections**.

A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections **only through its sectoral wing** that must separately register under the party-list system. The sectoral wing is by itself an independent sectoral party; it is linked to a political party through a coalition. **(2015 Bar)**

4. Sectoral parties or organizations may either be **"marginalized and underrepresented" or lacking in "well-defined political constituencies."** It is enough that their principal advocacy pertains to the special interests and concerns of their sector.

NOTE: Those "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. **(LUV-OF-HIP)**

Those lacking in "well-defined political constituencies" include professionals, the elderly, women, and the youth. **(PEWY)**

5. A majority of the members of sectoral parties or organizations that represent the "marginalized and underrepresented" or those representing parties or organizations that lack "well-defined political constituencies" **must belong to the sector they respectively represent**.
6. The nominees of SECTORAL parties or organizations that represent the "marginalized and underrepresented" or that represent those who lack "well-defined political constituencies," either **must belong** to their respective sectors, or **must have a track record of advocacy** for their respective sectors.
7. The nominees of NATIONAL and REGIONAL parties or organizations **must be bona-fide members** of their respective parties or organizations.
8. National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, *provided* that they **have at least one nominee who remains qualified**. *(Ibid.)*

NOTE: It is the parties or organizations which are voted for, not their candidates. However, it is the party-list representatives who are seated or elected

into office, not their parties or organizations (*Abayon v. HRET, G.R. No. 189466, Feb. 11, 2010*).

Effect of the change in affiliation of any party-list representative

Any elected party-list representative who changes his party-list group or sectoral affiliation during his term of office shall **forfeit his seat** (*Amores v. HRET, G.R. No. 189600, June 29, 2010*).

NOTE: If he changes his political party or sectoral affiliation within 6 months before an election, he shall **not be eligible for nomination** as party-list representative *under his new party or organization* (*Amores v. HRET, Ibid.*).

Vacancy in the seat reserved for party-list representatives

It shall be automatically occupied by the next representative from the list of nominees in the order submitted by the same party to the COMELEC and such representative shall serve for the unexpired term. If the list is exhausted, the party, organization, or coalition concerned shall submit additional nominees.

Formula mandated by the Constitution in determining the number of party-list representatives

The number of seats available to party-list representatives is based on the ratio of party-list representatives to the total number of representatives. Accordingly, we compute the number of seats available to party-list representatives from the number of legislative districts.

$$\left(\frac{\text{Number of seats available to legislative districts}}{0.8} \right) \times 0.20 = \text{Number of seats available to party-list representatives}$$

Simpler formula: No. of seats available to legislative districts DIVIDED BY 4

The above formula allows the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law.

After prescribing the ratio of the number of party-list representatives to the total number of representatives, the Constitution left the manner of allocating the seats available to party-list representatives to the wisdom of the legislature (*BANAT v. COMELEC, G.R. No. 179271, April 21, 2009*).



Guidelines in the allocation of seats for party-list representatives under Sec. 11 of RA 7941 (2014 Bar)

1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
2. The parties, organizations, and coalitions receiving at least 2% of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.
3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.
4. Each party, organization, or coalition shall be entitled to not more than 3 seats.

NOTE: In computing the *additional seats*, the guaranteed seats shall no longer be included because they have already been allocated at one seat each to every two-percenter. Thus, the remaining available seats for allocation as “additional seats” are the maximum seats reserved under the party-list system less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in RA 7941 allowing for a rounding off of fractional seats (*BANAT v. COMELEC, Ibid.*).

2% threshold as regards the allocation of additional seats is not valid anymore

The Court strikes down the 2% threshold only in relation to the distribution of the *additional seats* as found in the 2nd clause of Sec. 11(b) of RA 7941. The 2% threshold presents an unwarranted obstacle to the full implementation of Sec. 5(2), Art. VI of the Constitution and prevents the attainment of the “broadest possible representation of party, sectoral or group interests in the House of Representatives” (*BANAT v. COMELEC, Ibid.*).

NOTE: The 2% threshold is constitutional only insofar as the determination of the guaranteed seat is concerned.

Refusal and/or Cancellation of Registration

The COMELEC may, *motu proprio* or upon a verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

1. It is a religious sect or denomination, organization or association organized for religious purposes;

2. It advocates violence or unlawful means to seek its goals;
3. It is a foreign party or organization;
4. It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members, or indirectly through third parties, for partisan election purposes;
5. It violates or fails to comply with laws, rules or regulations relating to elections
6. It declares untruthful statements in its petition;
7. It has ceased to exist for at least one (1) year;
8. It fails to participate in the last two (2) preceding elections;
9. It fails to obtain at least 2% of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered

The Minero Ruling is erroneous

The *Minero Ruling* provides that a party list organization which does not participate in an election, necessarily gets, by default, less than 2% of the party-list votes. Said ruling is an erroneous application of Sec. 6(8) of RA 7941 [Party-List System Act].

Its basic defect lies in its characterization of the non-participation of a party-list organization in an election as similar to a failure to garner the 2% threshold party-list vote.

The Court cannot sustain PGBI’s delisting from the roster of registered parties, organizations or coalitions under the party-list system. Clearly, the Court cannot allow PGBI to be prejudiced by the continuing validity of an erroneous ruling. Thus, the Court now abandons *Minero* and strikes it out from our ruling case law (*PGB v. COMELEC, G.R. No. 190529, April 29, 2010*).

LEGISLATIVE PRIVILEGES, INHIBITIONS AND DISQUALIFICATIONS

Immunity From Arrest

Grants the legislators the privilege from arrest while Congress is “**in session**” with respect to offenses punishable by **NOT more than 6 years of imprisonment**, (1987 Constitution, Art. VI, Sec. 11), whether or not he is attending the session (*People v. Jalosjos, G.R. Nos. 132875-76, February 3, 2000*).

Purpose of Parliamentary Immunities

It is not for the benefit of the officials; rather, it is to protect and support the rights of the people by



ensuring that their representatives are doing their jobs according to the dictates of their conscience and to ensure the attendance of Congressman.

Legislative Privilege

No member shall be questioned or held liable in any forum other than his respective Congressional body for any debate or speech in Congress or in any committee thereof (1987 Constitution, Art. VI, Sec. 11; *Pobre v. Sen. Santiago*, August 25, 2009).

Limitations on Legislative Privilege

1. Protection is only against the forum other than the Congress itself. Thus, for defamatory remarks, which are otherwise privileged, a member may be sanctioned by either the Senate or the HoR, as the case may be.
2. The "speech or debate" must be made in performance of their duties as members of Congress.

Requirements for the privilege of speech and debate to operate

1. Remarks or comments are made while in session; and
2. Must be made in connection with the discharge of official duties

Coverage of speech or debate

It includes utterances made by Congressmen in the performance of their official functions, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such, at the time of the performance of the acts in question (*Jimenez v. Cabangbang*, G.R. No. L-15905, August 3, 1966).

Q: The Senate Committee on Accountability of Public Officials and Investigation conducted an investigation, in aid of legislation, regarding the alleged P1.601 billion overpricing of the new 11-storey Makati City Hall II Parking Building. During media interviews in the Senate, particularly during gaps and breaks in the plenary hearings, Sen. Trillanes expressed his opinion that Antonio Tiu appears to be a "front" or "nominee" or is acting as a "dummy" of the actual and beneficial owner of the Hacienda Binay. As such, Tiu filed a complaint for damages against Sen. Trillanes. Consequently, Sen. Trillanes asked for the dismissal of the case on

the ground that he enjoys parliamentary immunity. Is Sen. Trillanes correct?

A: NO. The remarks of Sen. Trillanes fall outside the privilege of speech or debate under Sec. 11, Art. VI of the 1987 Constitution. The statements were clearly not part of any speech delivered in the Senate or any of its committees. They were not also spoken in the course of any debate. It cannot likewise be successfully contended that they were made in the official discharge or performance of Sen. Trillanes' duties as a Senator, as the remarks were not part of or integral to the legislative process. To participate in or respond to media interviews is not an official function of any lawmaker; it is not demanded by his sworn duty nor is it a component of the process of enacting laws. A lawmaker may well be able to discharge his duties and legislate without having to communicate with the press. A lawmaker's participation in media interviews is not a legislative act, but "political in nature," outside of the ambit of the immunity conferred under the Speech or Debate Clause in the 1987 Constitution. The privilege arises not because of the statement made by a lawmaker, but because it is uttered in furtherance of legislation. (*Sen. Antonio Trillanes vs. Hon. Evangeline Castillo-Marigomen*, G.R. No. 223451, March 14, 2018)

Purpose of legislative privilege

To ensure the effective discharge of functions of Congress.

NOTE: The purpose of the privilege is to ensure the effective discharge of functions of Congress. The privilege may be abused but it is said that such is not so damaging or detrimental as compared to the denial or withdrawal of such privilege.

The senator-lawyer's privilege speech is not actionable criminally or be subject to a disciplinary proceeding under the Rules of Court. The Court, however, would be remiss in its duty if it let the Senator's offensive and disrespectful language that definitely tended to degrade the institution pass-by. It is imperative on the Court's part to re-instill in Senator/Atty. (Santiago) her duty to respect courts of justice, especially this Tribunal, and remind her anew that parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions for their own benefit, but to enable them, as the people's representatives, to perform the functions of their office without fear of being made responsible before the courts or other forums outside the congressional hall. It is intended to protect members of congress against government pressure and intimidation aimed at influencing the decision-making prerogatives of Congress and its members (*Pobre v. Sen. Defensor-Santiago*, A.C. No. 7399, August 25, 2009).

Congress "in recess"



If the recess was called for in between a regular or special session, the Congress is still considered in session. But if the recess was the **30-day compulsory recess**, Congress is not in session (1987 Constitution, Art. VI, Sec. 15).

Prohibitions attached to a legislator during his term

INCOMPATIBLE OFFICE	FORBIDDEN OFFICE
1 st sentence of Sec. 13, Art. VI	2 nd sentence of Sec. 13, Art. VI
Senator or any member of HoR	
May not hold any other office or employment in the Government, during his term without forfeiting his seat	Cannot be appointed to any office which have been created, or the emoluments thereof increased during the term for which he was elected NOTE: After such term, and even if he is re-elected, the disqualification no longer applies and he may therefore be appointed to the office
Automatically forfeits seat upon the member's assumption of such other office XPN: holds other office in <i>ex-officio</i> capacity	Even if he is willing to forfeit his seat, he may not be appointed to said office Purpose: to prevent trafficking in public office.
More of an inhibition	More of a prohibition

Rule on increase in salaries of members of Congress

Increase in the salaries shall take effect after the expiration of the full term of all the members of the Senate and the House of Representatives approving such increase (1987 Constitution, Art. VI, Sec. 10).

Particular inhibitions attached to the respective offices of Senators and Representatives

1. From "personally" appearing as counsel before any court of justice or before the Electoral

Tribunals, or quasi-judicial or other administrative bodies (1987 Constitution, Art. VI, Sec. 14). **(2004 Bar)**

NOTE: Since the practice of law covers a wide range of legislative activities (*Cayetano v. Monsod, G.R. No. 100113, Sept. 3, 1991*), the Senator or member of House of the Representatives is allowed to engage in other aspects of the law practice such as the giving of legal advice to clients, negotiating contracts in behalf of clients which necessitates legal knowledge, preparation of documents and similar others. (*Pineda, Legal Ethics, Page 34*)

2. Upon assumption of office, all members of the Senate and HoR must make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict in interest that may arise from the filing of a proposed legislation of which they are authors (1987 Constitution, Art. VI, Sec. 12). **(2004, 2010 Bar)**

Disqualifications attached to Senators and Representatives and their applications

DISQUALIFICATION	WHEN APPLICABLE
Incompatible Office	During his term If he does so, he forfeits his seat (1987 Constitution, Art. VI, Sec. 13).
Forbidden Office	If the office was created or the emoluments thereof increased during the term for which he was elected (1987 Constitution, Art. VI, Sec. 13).
Cannot personally appear as counsel before any court of justice, electoral tribunal, quasi-judicial and administrative bodies. (2004 Bar)	During his term of office (1987 Constitution, Art. VI, Sec. 14).
Cannot be financially interested, directly or indirectly, in any contract with or in any franchise, or special privilege granted by the Government. (2004 Bar)	During his term of office (1987 Constitution, Art. VI, Sec. 14).
Cannot intervene in any matter before any	When it is for his pecuniary benefit or



office of the Gov't. (2004 Bar)	where he may be called upon to act on account of his office (1987 Constitution, Art. VI, Sec. 14).
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QUORUM AND VOTING MAJORITIES

Quorum

Such number which enables a body to transact its business and gives such body the power to pass a law or ordinance or any valid act that is binding. In our constitution, it is required that the quorum be a majority of each house.

NOTE: In computing *quorum*, members who are outside the country and, thus, outside of each House's jurisdiction are not included. The basis for determining the existence of a quorum in the Senate shall be the total number of Senators who are within the coercive jurisdiction of the Senate (*Avelino v. Cuenco*, G.R. No. L-2821, March 4, 1949).

Effect if there is no quorum

Each House may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

NOTE: The members of the Congress cannot compel absent members to attend sessions if the reason of absence is a legitimate one. The confinement of a Congressman charged with a non-bailable offense is certainly authorized by law and has constitutional foundations (*People v. Jalosjos*, G.R. No. 132875-76, February 3, 2000).

Instances when the Constitution requires that the yeas and nays of the Members be taken every time a House has to vote

1. Upon the last and third readings of a bill (1987 Constitution, Art. VI, Sec. 26, par. 2);
2. At the request of 1/5 of the members present (1987 Constitution, Art. VI, Sec. 16, par. 4); and
3. In repassing a bill over the veto of the President. (1987 Constitution, Art. VI, Sec. 27, par. 1)

Instances when Congress is voting separately and voting jointly

SEPARATE	JOINT
<ul style="list-style-type: none"> • Choosing the President in case of a tie (1987 Constitution, Art. VII, Sec. 4). • Determining President's inability to discharge the powers and duties of his office (1987 Constitution, Art. VII, Sec. 11). • Confirming nomination of Vice-President (1987 Constitution, Art. VII, Sec. 9). • Declaring the existence of a state of war in joint session (1987 Constitution, Art. VI, Sec. 23, Par. 1). • Proposing Constitutional amendments (1987 Constitution, Art. XVII, Sec. 1). 	<ul style="list-style-type: none"> • When revoking or extending the proclamation suspending the privilege of writ of <i>habeas corpus</i> (1987 Constitution, Art. VII, Sec. 18). • When revoking or extending the declaration of martial law (1987 Constitution, Art. VII, Sec. 18).

Instances when Congress votes by majority

INSTANCES WHEN CONGRESS VOTES	NUMBER OF VOTES REQUIRED
Elect the Senate President or House of Representatives Speaker	Majority vote of all its respective members (1987 Constitution, Art. VI, Sec. 16, Par. 1)
Commission on Appointments ruling	Majority vote of all the members (1987 Constitution, Art. VI, Sec. 18)
Passing a law granting any tax exemption	Majority of all the members of Congress (1987 Constitution, Art. VI, Sec. 28, Par. 4)

Instances when Congress votes other than majority

INSTANCES WHEN CONGRESS VOTES	NUMBER OF VOTES REQUIRED
To suspend or expel a member in accordance with its rules and proceedings	2/3 of all its members (1987 Constitution, Art. VI, Sec. 16, Par. 3)



To enter the Yeas and Nays in the Journal	1/5 of the members present (1987 Constitution, Art. VI, Sec. 16, Par. 4)
To declare the existence of a state of war	2/3 of both houses in joint session voting separately (1987 Constitution, Art. VI, Sec. 23)

Non-intervention of courts in the implementation of the internal rules of Congress

As part of their inherent power, Congress can determine their own rules. Hence, the courts cannot intervene in the implementation of these rules insofar as they affect the members of Congress (*Osmeña v. Pendatun G.R. No L-17144, October 28, 1960*).

Elected officers of Congress

1. Senate President
2. Speaker of the House
3. Such officers as deemed by each house to be necessary

Vote required in election of officers

Majority vote of all respective members. (1987 Constitution, Art. VI, Sec. 16, par. 1).

Regular session of Congress

Congress convenes once every year on the 4th Monday of July, unless otherwise provided for by law. It continues in session for as long as it sees fit, until 30 days before the opening of the next regular session, excluding Saturdays, Sundays, and legal holidays (1987 Constitution, Art. VI, Sec. 15). **(1996 Bar)**

Instances when there are special sessions

1. Due to vacancies in the offices of the President and Vice President at 10 o'clock a.m. on the third day after the vacancies (1987 Constitution, Art. VII, Sec. 10)
2. To decide on the disability of the President because a majority of all the members of the cabinet have "disputed" his assertion that he is able to discharge the powers and duties of his office (1987 Constitution, Art. VII, Sec. 11)
3. To revoke or extend the Presidential Proclamation of Martial Law or suspension of the privilege of the writ of *habeas corpus* (1987 Constitution, Art. VII, Sec. 18)
4. Called by the President at any time when Congress is not in session (1987 Constitution, Art. VI, Sec. 15)

5. To declare the existence of a state of war in a joint session, by vote of 2/3 of both Houses (1987 Constitution, Art. VI, Sec. 23, par. 1)
6. When the Congress acts as the Board of Canvassers for the Presidential and Vice-Presidential elections (1987 Constitution, Art. VII, Sec. 4)
7. During impeachment proceedings (1987 Constitution, Art. XI, Sec. 3, par. 4 and 6).

In a special session, the Congress may consider "general legislation or only such subjects as the President may designate". In a regular session, "the power of the Congress is not circumscribed except by limitations imposed by organic law" (*Cruz and Cruz, Philippine Political Law, p. 241*).

Mandatory recess

The 30-day period prescribed before the opening of the next regular session, excluding Saturdays, Sundays, and legal holidays. This is the minimum period of recess and may be lengthened by the Congress in its discretion. It may, however, be called in special session at any time by the President (1987 Constitution, Art. VI, Sec. 15).

Rule on Adjournment

Neither House during the sessions of the Congress shall, without the consent of the other, adjourn for more than 3 days, nor to any other place than that in which the two Houses shall be sitting (1987 Constitution, Art. VI, Sec. 16, par. 5).

NOTE: The phrase "any other place" as here used refers not to the building but to the political unit where the two Houses may be sitting. Hence, if both Houses are sitting in the same building in the City of Manila, either of them may sit in another building in the same city without getting the consent of the other (*Cruz, Philippine Political Law, p. 250*).

Adjournment *sine die*

An interval between the session of one Congress and that of another.

DISCIPLINE OF MEMBERS

Disciplinary power of Congress

Each house may punish its members for disorderly behavior and, with concurrence of 2/3 of all its members, suspend, for not more than 60 days, or expel a member (1987 Constitution, Art. VI, Sec. 16, par. 3). **(1993, 2002 Bar)**

Determination of disorderly behavior

The House of Representatives is the judge of what constitutes disorderly behavior. The courts will not assume jurisdiction in any case which will amount



to an interference by the judicial department with the legislature (*Osmeña v. Pendatun*, G.R. No. L-17144, October 28, 1960).

NOTE: Members of Congress may also be suspended by the *Sandiganbayan* or by the Office of the Ombudsman. The suspension in the Constitution is different from the suspension prescribed in RA 3019 (Anti-Graft and Corrupt Practices Act). The latter is not a penalty but a preliminary preventive measure and is not imposed upon the petitioner for misbehavior as a member of Congress (*Santiago v. Sandiganbayan*, G.R. No. 128055, April 18, 2001).

Preventive suspension is not a penalty (2015 Bar)

A court-ordered preventive suspension is a preventive measure that is *different and distinct* from the suspension ordered by the HoR for disorderly behavior which is a penalty. Such House-imposed sanction is intended to enforce discipline among its members (*Paredes, Jr. v. Sandiganbayan*, G.R. No. 118354, August 8, 1995).

NOTE: The suspension under the Anti-Graft Law is **mandatory**, imposed not as a penalty but as a precautionary measure to prevent the accused public officer from frustrating his prosecution. It is incidental to the criminal proceedings before the court.

The House-imposed sanction on the other hand, is a penalty for disorderly behavior.

Thus, the order of suspension in the Anti-Graft Law is distinct from the power of the Congress under the Constitution to discipline its own ranks (*De Venecia Jr., v. Sandiganbayan*, G.R. No. 130240, February 5, 2002).

ELECTORAL TRIBUNAL (1990, 1996, 1998, 2002, 2006 Bar)

Composition of the Electoral Tribunal (ET)

1. 3 Supreme Court Justices designated by the Chief Justice;
2. 6 members of the Senate or the House of Representatives, as the case may be, chosen on the basis of proportional representation from the political parties and from those registered under the party-list system represented therein (1987 Constitution, Art. VI, Sec. 17).

NOTE: The senior Justice in the Electoral Tribunal shall be its Chairman.

Jurisdiction of the ETs

Each electoral tribunal shall be the sole judge of all contests relating to the election, returns, and

qualifications of their respective members (1987 Constitution, Art. VI, Sec. 17). This includes determining the validity or invalidity of a proclamation declaring a particular candidate as the winner. Each ET is also vested with rule-making power (*Lazatin v. HRET*, G.R. No. L-84297, Dec. 8, 1988).

NOTE: It is independent of the Houses of Congress and its decisions may be reviewed by the Supreme Court only upon showing of grave abuse of discretion.

Electoral contest

Where a defeated candidate challenges the qualification and claims for himself the seat of the proclaimed winner. In the absence of an election contest, ET is without jurisdiction.

When the winning candidate is considered as member of the Senate or HoR

Once he has: **(POA)**

1. been **Proclaimed**
2. taken his **Oath**; and

NOTE: The oath must be made:

- a. Before the Senate President or Speaker of the House, as the case may be; and
- b. In open session (*Reyes v. COMELEC*, G.R. No. 207264, June 25, 2013).

3. Assumed office

NOTE: Once a winning candidate has been proclaimed, taken his oath, and assumed office as Member of the House of Representatives (or of the Senate), the COMELEC's jurisdiction over the election contest relating to his election, returns and qualifications ends, and the HRET's (or SET's) own jurisdiction begins (*Vinzons-Chato v. COMELEC*, G.R. No. 172131, April 2, 2007).

By analogy with the cases of district representatives, once the party or organization of the *party-list nominee* becomes a member of the HoR, HRET has authority to pass upon election contests relating to his qualifications (*Abayon v. HRET*, G.R. No. 189466, February 11, 2010).

Q: Gemma ran for Congresswoman of Muntinlupa in the May 2013 elections. However, before the elections, the COMELEC cancelled her CoC after hearing a complaint filed against her. Later, she was declared winner as Congresswoman of Muntinlupa. The decision said she took her oath already and had not assumed her office as Congresswoman. Subsequently, COMELEC issued a certificate of finality on its earlier resolution cancelling Gemma's CoC. Gemma comes before the Court arguing that COMELEC has lost jurisdiction over



the case and it is the HRET that has jurisdiction as she is already declared a winner. Is Gemma's contention tenable?

A: NO. Gemma cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. The jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in *Art. VI, Sec. 17 of the 1987 Constitution*. To be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.

The term of office of a Member of the House of Representatives begins only "*at noon on the thirtieth day of June next following their election.*" Thus, until such time, the COMELEC retains jurisdiction. Consequently, before there is a valid or official taking of the oath it must be made (1) before the Speaker of the House of Representatives, and (2) in open session. Here, although she made the oath before Speaker Belmonte, there is no indication that it was made during plenary or in open session and, thus, it remains unclear whether the required oath of office was indeed complied with (*Reyes v. COMELEC, G.R. No. 207264, June 25, 2013*).

Power of each House over its members in the absence of election contest

The power of each House to expel its members or even to defer their oath-taking until their qualifications are determined may be exercised even without an election contest.

Q: Imelda ran for HoR. A disqualification case was filed against her on account of her residence. The case was not resolved before the election. Imelda won the election. However, she was not proclaimed. Imelda now questions the COMELEC's jurisdiction over the case. Does the COMELEC have jurisdiction over the case?

A: YES. The COMELEC retains jurisdiction. Since Imelda has not yet been proclaimed, she is not yet a member of the HoR. HRET's jurisdiction as the sole judge of all contests relating to elections, *etc.* of members of Congress begins only after a candidate has become a member of the HoR (*Romualdez-Marcos v. COMELEC, G.R. No. 119976, September 18, 1995*).

Q: Ating Koop party-list expelled its first nominee/representative Lico for refusing to honor the term-sharing agreement. A petition was filed with the COMELEC which sought his removal from being Ating Koop's representative. COMELEC 2nd Division expelled Lico. COMELEC

En Banc, however, dismissed the petition on the ground that it had no jurisdiction to expel Lico from the HoR, considering that his expulsion from Ating Koop affected his qualifications as member of the House, and therefore it was the HRET that had jurisdiction over the Petition. Notwithstanding, COMELEC En Banc still affirmed the validity of Lico's expulsion from Ating Koop. Is COMELEC En Banc's decision correct?

A: NO. While the COMELEC correctly dismissed the Petition to expel petitioner Lico from the House of Representatives for being beyond its jurisdiction, it nevertheless proceeded to rule upon the validity of his expulsion from *Ating Koop* – a matter beyond its purview. Without legal basis, however, is the action of the COMELEC in upholding the validity of the expulsion of petitioner Lico from *Ating Koop*, despite its own ruling that the HRET has jurisdiction over the disqualification issue. These findings already touch upon the qualification requiring a party-list nominee to be a *bona fide* member of the party-list group sought to be represented. The petition for Lico's expulsion from the House of Representatives is anchored on his expulsion from *Ating Koop*, which necessarily affects his title as member of Congress. A party-list nominee must have been, among others, a *bona fide* member of the party or organization for at least ninety (90) days preceding the day of the election. Needless to say, *bona fide* membership in the party-list group is a continuing qualification x xx. Under Section 17, Article VI of the Constitution, the HRET is the sole judge of all contests when it comes to qualifications of the members of the House of Representatives. Consequently, the COMELEC failed to recognize that the issue on the validity of petitioner Lico's expulsion from *Ating Koop* is integral to the issue of his qualifications to sit in Congress.

Our ruling here must be distinguished from *Regina Ongsiako Reyes v. Commission on Elections*. In *Reyes*, the petitioner was proclaimed winner of the 13 May 2013 Elections, and took her oath of office before the Speaker of the House of Representatives. However, the Court ruled on her qualifications since she was not yet a member of the House of Representatives: petitioner Reyes had yet to assume office, the term of which would officially start at noon of 30 June 2013, when she filed a Petition for Certiorari dated 7 June 2013 assailing the Resolutions ordering the cancellation of her Certificate of Candidacy. In the present case, all three requirements of proclamation, oath of office, and assumption of office were satisfied.

Moreover, in *Reyes*, the COMELEC En Banc Resolution disqualifying petitioner on grounds of lack of Filipino citizenship and residency had become final and executory when petitioner elevated it to this Court. Therefore, there was no longer any pending case on the qualifications of



petitioner Reyes to speak of. Here, the question of whether petitioner Lico remains a member of the House of Representatives in view of his expulsion from *Ating Koop* is a subsisting issue. Finally, in Reyes, We found the question of jurisdiction of the HRET to be a non-issue, since the recourse of the petitioner to the Court appeared to be a mere attempt to prevent the COMELEC from implementing a final and executory judgment. In this case, the question on the validity of petitioner Lico's expulsion from Ating Koop is a genuine issue that falls within the jurisdiction of the HRET, as it unmistakably affects his qualifications as party-list representative (*Lico v. COMELEC*, G.R. No. 205505, September 29, 2015).

Valid grounds or just causes for termination of membership to the tribunal

Members of the Electoral Tribunal enjoy the security of tenure. However, they may be terminated for a just cause such as:

1. Expiration of Congressional term of office
2. Death or permanent disability
3. Resignation from the political party he represents in the tribunal
4. Formal affiliation with another political party
5. Removal from office for other valid reasons (*Bondoc v. Pineda*, G.R. No. 97710, September 26, 1991).

NOTE: Unlike the Commission on Appointments, the ET shall meet in accordance with their rules, regardless of whether Congress is in session or not.

Q: Can the Senators-members of the Senate Electoral Tribunal be disqualified because an election contest is filed against them?

A: NO. The Supreme Court held that it cannot order the disqualification of the Senators-members of the Electoral Tribunal simply because they were themselves respondents in the electoral protest, considering the specific mandate of the Constitution and inasmuch as all the elected Senators were actually named as respondents. (*Abbas v. SET*, G.R. No. 83767, October 22, 1988)

ET decisions are not appealable

Art. VI, Sec. 17 provides that the SET/HRET is the sole judge of all contests. Hence, from its decision, there is no appeal. Appeal is not a constitutional right but merely a statutory right.

Remedy from an adverse decision of the ET

A special civil action for *certiorari* under Rule 65 of the Rules of Court may be filed. This is based on

grave abuse of discretion amounting to lack or excess of jurisdiction. This shall be filed before the Supreme Court.

NOTE: Under the doctrine of primary administrative jurisdiction, prior recourse to the House is necessary before the petitioners may bring the case to the Supreme Court (*Pimentel vs. House of Representative Electoral Tribunal*, G.R. No. 141489, November 29, 2002).

COMMISSION ON APPOINTMENTS (2002 Bar)

Composition of the Commission on Appointments (CA)

1. Senate President as *ex-officio* chairman
2. 12 Senators
3. 12 members of the HoR. (1987 Constitution, Art. VI, Sec. 18)

NOTE: A political party must have at least **two (2) senators** in the Senate to be able to have a representative in the CA.

Thus, where there are two or more political parties represented in the Senate, a political party/coalition with a single senator in the Senate cannot constitutionally claim a seat in the Commission on Appointments. It is not mandatory to elect 12 senators to the Commission; what the Constitution requires is that there must be at least a majority of the entire membership (*Guingona, Jr. v. Gonzales*, G.R. No. 106971, October 20, 1992).

Membership in the CA

The members of the Commission shall be elected by each House on the basis of proportional representation from the political party and party list. Accordingly, the sense of the Constitution is that the membership in the CA must always reflect political alignments in Congress and must therefore adjust to changes. It is understood that such changes in party affiliation must be permanent and not merely temporary alliances. Endorsement is not sufficient to get a seat in CA (*Daza v. Singson*, G.R. No. 86344, Dec. 21, 1989).

NOTE: The provision of Sec. 18, Art. VI of the Constitution, on proportional representation is mandatory in character and does not leave any discretion to the majority party in the Senate to disobey or disregard the rule on proportional representation; otherwise, the party with a majority representation in the Senate or the HoR can by sheer force of numbers impose its will on the hapless minority. By requiring a proportional representation in the CA, Sec. 18 in effect works as a



check on the majority party in the Senate and helps maintain the balance of power. No party can claim more than what it is entitled to under such rule (*Guingona, Jr., et al., v. Gonzales, et al., G.R. No. 106971, March 1, 1993*).

Presidential appointments subject to confirmation by the Commission

1. Heads of the Executive departments XPN: Vice-President who is appointed to the post
2. Ambassadors, other public ministers, or consuls
3. Officers of the AFP from the rank of colonel or naval captain
4. Other officers whose appointments are vested in him by the Constitution (*i.e.* COMELEC members, etc.)

NOTE: The enumeration is *exclusive*.

Rules on voting

1. The CA shall rule by a majority vote of all the members.
2. The chairman shall only vote in case of tie.
3. The CA shall act on all appointments within 30 session days from their submission to Congress (*1987 Constitution, Art. VI, Sec. 18*).

Limitations in the confirmation of appointment

1. Congress cannot by law prescribe that the appointment of a person to an office created by such law be subject to confirmation by the Commission.
2. Appointments extended by the President to the above-mentioned positions while Congress is not in session shall only be effective until disapproval by the Commission or until the next adjournment of Congress (*Sarmiento III, v. Mison, G.R. No. L-79974, Dec. 17, 1987*).

Guidelines in the meetings of the CA

1. The Commission shall meet only while Congress is **in session**, at the **call** of its Chairman or a **majority** of all its members.
2. Since the Commission is also an independent constitutional body, its rules of procedure are also outside the scope of congressional powers as well as that of the judiciary (*Bondoc v. Pineda, G.R. No. 97710, September 26, 1991*).

NOTE: The ET and the CA shall be constituted within 30 days after the Senate and the HoR shall have been organized with the election of the Senate President and the Speaker of the House.

Remedy from an adverse decision of the CA

A special civil action for *certiorari* under Rule 65 of the Rules of Court may be filed. This is based on

grave abuse of discretion amounting to lack or excess of jurisdiction. This shall be filed before the Supreme Court.

POWERS OF CONGRESS

LEGISLATIVE

Legislative power

The power or competence to propose, enact, ordain, amend/alter, modify, abrogate or repeal laws. It is vested in the **Congress** which shall consist of a *Senate* and a *House of Representatives*, except to the extent reserved to the *people* by the provision on *initiative and referendum*.

Legislative powers of Congress

1. General plenary power (*Art. VI, Sec. 1*)
2. Specific power of appropriation
3. Taxation and expropriation
4. Legislative investigation
5. Question hour

Doctrine of Shifting Majority

For each House of Congress to pass a bill, only the votes of the majority of those present in the session, there being a quorum, is required.

Rules regarding the passage of bills

1. No bill passed by either House shall become a law unless it has passed 3 readings on separate days.
2. Printed copies of the bill in its final form should be distributed to the Members 3 days before its passage
3. Upon the last reading of a bill, no amendment thereto shall be allowed.
4. The vote on the bill shall be taken immediately after the last reading of a bill.
5. The *yeas* and the *nays* shall be entered in the Journal.

XPN: The certification of the President, due to the necessity of its immediate enactment to meet a public calamity or emergency, dispenses with the reading on separate days and the printing of the bill in the final form before its final approval (*Tolentino v. Secretary of Finance, G.R. No. 115455, October 30, 1995*).

Instances when a bill becomes a law (1991, 1993, 1996 Bar)

1. Approved and signed by the President
2. Presidential veto overridden by 2/3 vote of all members of both Houses



3. Failure of the President to veto the bill and to return it with his objections to the House where it originated, within 30 days after the date of receipt
4. A bill calling a special election for President and Vice-President under Sec. 10. Art. VII becomes a law upon its approval on the third reading and final reading.

LEGISLATIVE INQUIRIES AND OVERSIGHT FUNCTIONS

Legislative Inquiries/Inquiries In Aid of Legislation

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in, or affected by, such inquiries shall be respected (*1987 Constitution, Art. VI, Sec. 21*).

Matters that can be the subject of inquiries in aid of legislation

Indefinite. The field of legislation is very wide, and because of such, the field of inquiry is also very broad and may cover administrative, social, economic, political problem (inquiries), discipline of members, etc. Suffice it to say that it is **"intrinsic" in and co-extensive with legislative power** (*Arnault v. Nazareno, G.R. No. L-3820, July 18, 1950*).

"In aid of legislation" does not mean that there is pending legislation regarding the subject of the inquiry. In fact, investigation may be needed for purposes of proposing future legislation.

NOTE: If the stated purpose of the investigation is to determine the existence of violations of the law, the investigation is no longer "in aid of legislation" but "in aid of prosecution." This violates the principle of separation of powers and is beyond the scope of Congressional powers.

Limitations on legislative investigation

1. The persons appearing in or affected by such legislative inquiries shall be respected.
2. The Rules of procedures to be followed in such inquiries shall be published for the guidance of those who will be summoned. This must be strictly followed so that the inquiries are confined only to the legislative purpose and to avoid abuses.

NOTE: It is incumbent upon the Senate, HOR, or any of its respective committee to publish the rules for its legislative inquiries in each Congress or otherwise make the published rules clearly state that the same shall be effective in subsequent Congresses or until

they are amended or repealed to sufficiently put the public on notice. Publication of said rules in the internet cannot be considered as compliance with this constitutional requirement.

3. The investigation must be in aid of legislation.
4. Congress may not summon the President as witness or investigate the latter in view of the doctrine of separation of powers except in impeachment cases.

NOTE: It is the President's prerogative, whether to divulge or not the information, which he deems confidential or prudent in the public interest.

5. Congress may no longer punish the witness in contempt after its final adjournment. The basis of the power to impose such penalty is the right to self-preservation. And such right is enforceable only during the existence of the legislature (*Lopez v. Delos Reyes, G.R. No. L-34361, Nov. 5, 1930*).
6. Congress may no longer inquire into the same justiciable controversy already before the court (*Bengzon v. Senate Blue Ribbon Committee, G.R. No. 89914, November 20, 1991*).

Q: Sen. Rodolfo Diaz accused the Vice Chairman of the Standard Chartered Bank (SCB) of violating the Securities Regulation Code for selling unregistered foreign securities. This has led the Senate to conduct investigation in aid of legislation. SCB refused to attend the investigation proceedings on the ground that criminal and civil cases involving the same issues were pending in courts. Decide.

A: The mere filing of a criminal or administrative complaint before a court or a quasi-judicial body should not automatically bar the conduct of legislative investigation. Otherwise, it would be extremely easy to subvert any intended inquiry by Congress through the convenient ploy of instituting a criminal or an administrative complaint. Thus, the Vice Chairman of SCB is not correct in refusing to attend the investigation proceeding on the ground that criminal and civil cases involving the same issues are pending in courts (*Standard Chartered Bank v. Senate, G.R. No. 167173, December 27, 2007*).

Distinction between *Standard Chartered Bank v. Senate* and *Bengzon v. Senate Blue Ribbon Committee*

It is true that in *Bengzon*, the Court declared that the issue to be investigated was one over which jurisdiction had already been acquired by the *Sandiganbayan*, and to allow the Senate Blue Ribbon Committee to investigate the matter would create



the possibility of conflicting judgments; and that the inquiry into the same justiciable controversy would be an encroachment on the exclusive domain of judicial jurisdiction that had set in much earlier.

There are a number of cases already pending in various courts and administrative bodies involving Standard Chartered Bank, relative to the alleged sale of unregistered foreign securities. There is a resemblance between this case and *Bengzon*. However, the similarity ends there.

Central to the Court's ruling in *Bengzon* – that the Senate Blue Ribbon Committee was without any constitutional mooring to conduct the legislative investigation – was the Court's determination that the intended inquiry was **not in aid of legislation**. The Court found that the speech of Senator Enrile, which sought such investigation, contained no suggestion of any contemplated legislation; it merely called upon the Senate to look into possible violations of Sec. 5, RA No. 3019. Thus, the Court held that the requested probe failed to comply with a fundamental requirement of Sec. 21, Art. VI.

Unfortunately for SCB, this distinguishing factual milieu in *Bengzon* does not obtain in the instant case. The unmistakable objective of the investigation, as set forth in the said resolution, exposes the error in SCB's allegation that the inquiry, as initiated in a privilege speech by the very same Senator Enrile, was simply "to denounce the illegal practice committed by a foreign bank in selling unregistered foreign securities." This fallacy is made more glaring when we consider that, at the conclusion of his privilege speech, Senator urged the Senate **"to immediately conduct an inquiry, in aid of legislation, so as to prevent the occurrence of a similar fraudulent activity in the future"** (*Standard Chartered Bank v. Senate, G.R. No. 167173, December 27, 2007*).

Contempt powers of Congress

Even if the Constitution only provides that Congress may punish its members for disorderly behavior or expel the same, it is not an exclusion of power to hold other persons in contempt.

NOTE: Congress has the inherent power to punish recalcitrant witnesses for contempt, and may have them incarcerated until such time that they agree to testify. The **continuance of such incarceration only subsists for the lifetime, or term, of such body**. Thus, each House lasts for only 3 years. But if incarcerated **by the Senate**, it is indefinite because the Senate, *with its staggered terms as an institution*, is a continuing body. **(2014 Bar)**

Legislative contempt vis-à-vis pardoning power of the President

Legislative contempt is a limitation on the President's power to pardon by virtue of the doctrine of separation of powers.

Question Hour

Where the heads of departments may, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the HoR at least 3 days before their scheduled appearance. Interpellations shall not be limited to written questions, but it may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session (*1987 Constitution, Art. VI, Sec. 22*).

Question hour vs. Legislative investigation

QUESTION HOUR (SEC. 22, ART. VI)	LEGISLATIVE INVESTIGATION (SEC. 21, ART. VI)
As to persons who may appear	
Only a department head	Any person
As to who conducts the investigation	
Entire body	Committees/Entire Body
As to subject matter	
Matters related to the department only	Any matter for the purpose of legislation

Oversight power of Congress

Embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted. It concerns post-enactment measures undertaken by Congress (*Opinion of J. Puno, Macalintal v. COMELEC, G.R. No. 157013, July 10, 2003*).

Scope of the power of oversight

1. Monitor bureaucratic compliance with program objectives;
2. Determine whether agencies are properly administered;
3. Eliminate executive waste and dishonesty;
4. Prevent executive usurpation of legislative authority; and



5. Assess executive conformity with the congressional perception of public interest (*Opinion of J. Puno, Macalintal v. COMELEC, Ibid.*).

Bases of oversight power of Congress

1. Intrinsic in the grant of legislative power itself;
2. Integral to the system of checks and balances; and
3. Inherent in a democratic system of government.

Categories of Congressional Oversight Functions

1. *Scrutiny* — to determine economy and efficiency of the operation of government activities.

Congress may request information and report from the other branches of government and give recommendations or pass resolutions for consideration of the agency involved through:

- a. Power of appropriation and budget hearing (*1987 Constitution, Art. VII, Sec. 22*)
- b. Question Hour (*1987 Constitution, Art. VI, Sec. 22*)
- c. Power of Confirmation (*1987 Constitution, Art. VI, Sec. 18*)

But legislative scrutiny does not end in budget hearings. Congress can ask the heads of departments to appear before and be heard by either the House on any matter pertaining to their department.

Likewise, Congress exercises legislative scrutiny thru its power of confirmation to find out whether the nominee possesses the necessary qualifications, integrity and probity required of all public servants.

2. *Congressional Investigation* — Involves a more intense digging of facts through inquiries in aid of legislation under Sec. 21, Art. VI.
3. *Legislative Supervision* — most encompassing form; connotes a continuing and informed awareness on the part of congressional committee regarding executive operations in a given administrative area. It allows Congress to scrutinize the exercise of delegated law-making authority, and permits Congress to retain part of that delegated authority through:

Legislative veto – Congress retains a “right” or “power” to approve or disapprove any regulation enacted by administrative body before it takes effect. It is in the form of an *inward-turning delegation* designed to attach a congressional leash to an agency to which

Congress has by law initially delegated broad powers (*ABAKADA Guro Party-list v. Purisima, G.R. No. 166715, Aug. 14, 2008*).

Legislative veto violates the doctrine of separation of powers, thus, unconstitutional

In exercising discretion to approve or disapprove the IRR based on a determination of whether or not it conformed to the law, Congress arrogated judicial power unto itself, a power exclusively vested in the Supreme Court by the Constitution. Thus, violating the doctrine of separation of powers.

From the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional (*ABAKADA Guro Party-list v. Purisima, Ibid.*).

Senate is not allowed to continue the conduct of legislative inquiry without a duly published rules of procedure

The phrase “duly published rules of procedure” requires the Senate of every Congress to publish its rules of procedure governing inquiries in aid of legislation because every Senate is distinct from the one before it or after it (*Garcillano v. HoR Committee on Public Information, G.R. No. 170338, December 23, 2008*).

Invalidity of Publication in the Internet

The Electronic Commerce Act of 2009 merely recognizes the admissibility in evidence of electronic data messages and/or documents. It does not make the internet a medium for publishing laws, rules and regulations (*Garcillano v. HoR Committee on Public Information, ibid.*).

Publication of the internal rules of Congress

The Constitution does not require publication of the internal rules of the House or Senate. Since rules of the House or Senate affect only their members, such rules need not be published, unless such rules expressly provide for their publication before the rules can take effect (*Pimentel v. Senate Committee of the Whole, G.R. No. 187714, March 8, 2011*).

Q: During a hearing of the Senate Committee of the Whole, some proposed amendments to the Rules of the Ethics Committee that would constitute the Rules of the Senate Committee of the Whole were adopted. Senator Chi raised as an issue the need to publish the proposed amended Rules of the Senate Committee of the Whole, as directed by the amended Rules itself. However, the Senate Committee of the Whole proceeded without publication of the amended Rules. Is the publication of the Rules of the



Senate Committee of the Whole required for their effectivity?

A: YES. The Rules must be published before the Rules can take effect. Thus, even if publication is not required under the Constitution, publication of the Rules of the Senate Committee of the Whole is required because the Rules expressly mandate their publication. To comply with due process requirements, the Senate must follow its own internal rules if the rights of its own members are affected (*Pimentel v. Senate Committee of the Whole, ibid.*).

Senate is no longer a continuing legislative body

The present Senate under the 1987 Constitution is no longer a continuing legislative body. It has 24 members, 12 of whom are elected every 3 years for a term of 6 years each. Thus, the term of 12 Senators expires every 3 years, leaving less than a majority of Senators to continue into the next Congress since the *Rules of Procedure* must be republished by the Senate after every expiry of the term of the 12 Senators (*Garcillano v. HoR Committee on Public Information, G.R. No. 170338, December 23, 2008*).

Senate as an INSTITUTION is continuing (2014 Bar)

There is no debate that the Senate *as an institution* is "continuing", as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it.

Undeniably, all pending matters and proceedings, *i.e.* unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered *terminated* upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, ***not in the same status, but as if presented for the first time.*** The logic and practicality of such a rule is readily apparent considering that the Senate of the succeeding Congress (which will typically have a different composition as that of the previous Congress) should not be bound by the acts and deliberations of the Senate of which they had no part (*Neri v. Senate Committee, GR. No. 180643, September 4, 2008*).

THE BICAMERAL CONFERENCE COMMITTEE

Purpose of the Bicameral Conference Committee

In a bicameral system, bills are independently processed by both Houses of Congress. It is not unusual that the final version approved by one House differs from what has been approved by the other.

The "conference committee," consisting of members nominated from both Houses, is an extra-constitutional creation of Congress whose function is to propose to Congress ways of settling, reconciling or threshing out conflicting provisions found in the Senate version and in the House version of a bill (*Opinion of J. Callejo, Sr., ABAKADA v. Ermita, G.R. No. 168056, September 1, 2005*).

Extent of the power of the Committee

The conferees are not limited to reconciling the differences in the bill but may introduce new provisions germane to the subject matter or may report out an entirely new bill on the subject (*Tolentino v. Sec. of Finance, G.R. No. 115455, August 25, 1994*).

Scope of the powers of the Committee

1. Adopt the bill entirely
2. Amend or Revise
3. Reconcile the House and Senate Bills
4. Propose entirely new provisions not found in either the Senate or House bills

Reconcile or harmonize disagreeing provisions

The changes introduced by the Bicameral Conference Committee are meant only to reconcile and harmonize the disagreeing provisions for it does not inject any idea or intent that is wholly foreign to the subject embraced by the original provisions.

To reconcile or harmonize disagreeing provisions, the Bicameral Conference Committee may then (a) adopt the specific provisions of either the House bill or Senate bill, (b) decide that neither provisions in the House bill or the provisions in the Senate bill would be carried into the final form of the bill, and/or (c) try to arrive at a compromise between the disagreeing provisions.

Thus, the changes made by the Bicameral Conference Committee in the versions passed by the Senate and House of the RVAT Law such as the inclusion of the stand-by authority of the President, omission of the *no pass-on* provision included in both Senate and House versions, inclusion of provisions on other kinds of taxes and VAT only found in the Senate bill are valid (*Escudero v. Purisima, G.R. No. 168463, September 1, 2005; ABAKADA v. Ermita, GR 168056, September 1, 2005*).

LIMITATIONS ON LEGISLATIVE POWER

Substantive

- a) *Express:*
 - a. Bill of Rights (1987 Constitution, Art. III)
 - b. On Appropriations [1987 Constitution, Art. VI, Secs. 25 and 29(1&2)]



- c. On Taxation (1987 Constitution, Art. VI, Secs. 28 and 29, par. 3)
 - d. On Constitutional appellate jurisdiction of SC (1987 Constitution, Art. VI, Sec. 30)
 - e. No law granting a title of royalty or nobility shall be enacted (1987 Constitution, Art. VI, Sec. 31).
 - f. No specific funds shall be appropriated or paid for use or benefit of any religion, sect, etc., except for priests, etc., assigned to AFP, penal institutions, etc. (1987 Constitution, Art. VI, Sec. 29[2])
- b) *Implied:*
- a. Prohibition against irrevocable laws
 - b. Non-delegation of powers
- XPNS to Non-Delegation Doctrine:**
- i. Delegation to the President [1987 Constitution, Art. VI, Sec. 23(2) and Sec. 28(2)]
 - ii. Delegation to the people (1987 Constitution, Art VI, Sec. 32)

Procedural

1. Only one subject, to be stated in the title of the bill [1987 Constitution, Art. VI, Sec. 26(1)].
2. Three (3) readings on separate days; printed copies of the bill in its final form to be distributed to its members 3 days before its passage, except if the President certifies to its immediate enactment to meet a public calamity or emergency; upon its last reading, no amendment shall be allowed and the vote thereon shall be taken immediately and the yeas and nays entered into the Journal [1987 Constitution, Art. VI, Sec. 2(2)].
3. Appropriation bills, revenue bills, tariff bills, bills authorizing the increase of public debt, bills of local application and private bills shall originate exclusively in the House of Representatives. (1987 Constitution, Art. VI, Sec. 24)

One bill-one subject rule

Every bill passed by the Congress shall embrace only one subject. The subject shall be expressed in the title of the bill. This rule is mandatory.

NOTE: The purposes of such rule are:

1. To prevent hodgepodge or log-rolling legislation;
2. To prevent surprise or fraud upon the legislature; and
3. To fairly apprise the people of the subjects of legislation (*Central Capiz v. Ramirez, G.R. No. 16197, March 12, 1920*).

Determination of the sufficiency of the title

It suffices if the title should serve the purpose of the constitutional demand that it informs the legislators, the persons interested in the subject of the bill, and the public, of the nature, scope and consequences of

the proposed law and its operation; thus, prevent surprise or fraud upon the legislators.

Test: Whether or not it is misleading; either in referring to or indicating one subject where another or different one is really embraced in the act, or in omitting any expression or indication of the real subject or scope of the act. (*Lidasan v. COMELEC, G.R. No. L-28089, Oct. 25, 1967*)

Number of readings before becoming a law (1996 Bar)

During the **First Reading**, only the title of the bill is read, then it is passed to the proper committee for study. On the **Second Reading**, the entire text is read, and debates and amendments are held. On the **Third Reading**, only the title is read, and votes are taken immediately thereafter.

Each bill must pass 3 readings each in both Houses. In other words, there must be a total of 6 readings.

GR: Each reading shall be held on separate days and printed copies thereof in its final form shall be distributed to its Members, 3 days before its passage.

XPN: If a bill is certified as urgent by the President as to the necessity of its immediate enactment to meet a public calamity or emergency, the 3 readings can be held on the same day [1987 Constitution, Art. VI, Sec. 26(2)]

Reasons for the “three readings on separate days” rule

To prevent hasty and improvident legislation, and afford the legislators time to study and deliberate the measures.

The two-fold purpose:

1. To inform the legislators of the matters they shall vote on; and
2. To give them notice that a measure is in progress through enactment process (*Abas Kida, v. Senate, G.R. No. 196271, October 18, 2011*).

LIMITATIONS ON APPROPRIATION, REVENUE, AND TARIFF MEASURES

Appropriation bill

Primarily made for the appropriation of a sum of money from the public treasury.

NOTE: A bill creating a new office, and appropriating funds for it is not an appropriation bill.

Revenue bill



Specifically designed to raise money or revenue through imposition or levy.

Bill of local application

A bill limited to specific localities, such as the creation of a town. Hence, it is one involving purely local or municipal matters, e.g. the charter of a city.

Private bills

Those which affect private persons, such as a bill granting citizenship to a specific foreigner, or a bill granting honorary citizenship to a distinguished foreigner.

Tariff bills

Those that specify the rates or duties to be imposed on imported articles.

Constitutional limitations on the legislative's power to enact laws on appropriation, revenue and tariff (ART) measures

1. *Bills which shall **originate exclusively in the HoR**, but the Senate may propose or concur with amendments: (APRIL)(1996 Bar)*
 - a. Appropriation,
 - b. Revenue or tariff
 - c. authorizing Increase of the public debt,
 - d. Local application, and
 - e. Private bills (1987 Constitution, Art. VI, Sec. 24)

NOTE: It does not prohibit the filing in the Senate of a substitute bill, so long as the action by the Senate is withheld pending the receipt of the House bill (*Tolentino v. Sec. of Finance*, G.R. No. 115455, Aug. 25, 1994).

2. The President shall have the power to veto any particular item/s in an ART bill, but the veto shall not affect the item/s to which he does not object. [1987 Constitution, Art. VI, Sec. 27(2)]

Power of appropriation

The spending power, also called the “**power of the purse**”, belongs to Congress, subject only to the veto power of the President. It carries with it the power to specify the project or activity to be funded under the appropriation law.

Appropriation law

A statute enacted for the specific purpose of authorizing the release of public funds from the treasury.

Classifications of appropriations

1. *General appropriation law* – Passed annually, and intended for the financial operations of the entire government during one fiscal period;

Contains an estimate of revenues and funding sources, which are usually (1) taxes, (2) capital revenues (like proceeds from the sales of assets), (3) grants, (4) extraordinary income (like dividends of government corporations) and (5) borrowings. (*Araullo v. Aquino III*, G.R. No. 209287, July 1, 2014)

GAA is not self-executory

The execution of the GAA was still subject to a program of expenditure to be approved by the President, and such approved program of expenditure was the basis for the release of funds. The mere approval by Congress of the GAA does not instantly make the funds available for spending by the Executive Department. The funds authorized for disbursement under the GAA are usually still to be collected during the fiscal year. Thus, it is important that the release of funds be duly authorized, identified, or sanctioned to avert putting the legitimate Program, Activity, Projects (PAPs) of the Government in fiscal jeopardy. (*TESDA v. COA*, G.R. No. 196418, Feb. 10, 2015)

NOTE: The requirement of availability of funds before the execution of a government contract, however, has been modified by R.A. No. 9184 [Government Procurement Reform Act] which requires not only the sufficiency of funds at the time of the signing of the contract, but also upon the commencement of the procurement process. Unless R.A. No. 9184 is amended or repealed, all future government projects must first have a sufficient appropriation before engaging the procurement activity (*Jacomille v. Abaya*, G.R. No. 212381, April 22, 2015).

2. *Special appropriation law* – Designed for a specific purpose.

Implied limitations on appropriation power

1. Must specify a public purpose;
2. Sum authorized for release must be determinate, or at least determinable (*Guingona v. Carague*, G.R. No. 94571, April 22, 1991).

Constitutional limitations on special appropriations measures

1. Must specify public purpose for which the sum was intended;



2. Must be supported by funds actually available as certified by the National Treasurer or to be raised by corresponding revenue proposal therein [1987 Constitution, Art. VI, Sec. 25(4)].

Constitutional rules on General Appropriations Laws

1. Congress may not increase appropriations recommended by the President for the operations of the government;
2. Form, content and manner of preparation of budget shall be provided by law;
3. No provision or enactment shall be embraced in the bill unless it releases specifically to some particular appropriations therein;
4. Procedure for approving appropriations for Congress shall be the same as that of other departments in order to prevent *sub-rosa* appropriations by Congress; and
5. Prohibition against transfer of appropriations from one branch (judiciary, legislative, and executive) to another. Nonetheless, the following may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations (**Doctrine of Augmentation**):
 - a. President
 - b. Senate President
 - c. Speaker of the HoR
 - d. Chief Justice
 - e. Heads of Constitutional Commissions [1987 Constitution, Art. VI, Sec. (5)];

Doctrine of Augmentation (1996, 1998 Bar)

GR: No law shall be passed authorizing any transfer of appropriations.

XPN: The following may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations in accordance with **Doctrine of Augmentation**:

1. President;
2. President of the Senate;
3. Speaker of the House of Representatives;
4. Chief Justice of the Supreme Court; and
5. Heads of Constitutional Commissions. (1987 Constitution, Art. VI, Sec. 25[5]; *Demetria v. Alba*, G.R. No. 71977, February 27, 1987 and *Araullo v. Aquino III*, G.R. No. 209287, July 1, 2014)
6. Prohibitions against appropriations for sectarian benefit; and
7. **Automatic re-appropriation**– If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force

and effect until the general appropriations bill is passed by the Congress [1987 Constitution, Art. VI, Sec. 25(7)].

Ratio: For the purpose of preventing the disruption in government operations and unauthorized disbursement of funds

Budget

Financial program of the national government for the designated calendar year, providing for the estimates of receipts of revenues and expenditures.

Budget proposal

The President shall propose the budget and submit it to Congress. It shall indicate the expenditures, sources of financing, receipts from previous revenues and proposed revenue measures. It will serve as a guide for Congress:

1. In fixing the appropriations;
2. In determining the activities which should be funded (1987 Constitution, Art. VII, Sec. 22).

NOTE: The proposed budget is not final. The President may propose the budget but still the final say on the matter of appropriation is lodged in the Congress (*Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994).

Modification of Congress of the budget proposal

Congress may only reduce but not increase the budget.

Each legislator cannot exercise the appropriation power of the Congress

Legislative power shall be exclusively exercised by the body to which the Constitution has conferred the same. The power to appropriate must be exercised only through legislation, pursuant to Sec. 29(1), Art. VI of the Constitution (*Belgica v. Ochoa*, G.R. No. 208566, November 19, 2013).

Q: The budget of a predominantly Muslim province provides the Governor with a certain amount as his discretionary funds. Recently, however, the Sangguniang Panlalawigan passed a resolution appropriating P100,000 as a special discretionary fund of the Governor, to be spent by him in leading a pilgrimage of his province mates to Mecca, Saudi Arabia, Islam's holiest city.

Philconsa, on constitutional grounds, has filed suit to nullify the resolution of the Sangguniang Panlalawigan giving the special discretionary fund to the Governor for the stated purpose. How would you decide the case? Give your reasons.



A: The resolution is unconstitutional because:

1. It violates Art. VI, Sec. 29(2) which prohibits the appropriation of public money or property, directly or indirectly, for the use, benefit or support of any system of religion;
2. It contravenes Art. VI, Sec. 25(6) which limits the appropriation of discretionary funds only for public purposes; and
3. It constitutes a clear violation of the Non-establishment Clause of the Constitution.

NOTE: The use of discretionary funds for a purely religious purpose is unconstitutional, and the fact that the disbursement is made by resolution of a local legislative body and not by Congress does not make it any less offensive to the Constitution. Above all, the resolution constitutes a clear violation of the Non-establishment Clause of the Constitution.

Deficit in the final budget cannot be automatically taken from the National Treasury

Congress will still have to enact a law before money can be paid out of the National Treasury [Art. VI, Sec. 29(1)].

Q: Daraga Press filed with COA a money claim for the payment of textbooks it allegedly delivered to DepEd-ARMM. COA denied the money claim because it found no appropriation for the purchase of said textbooks. Is COA's denial correct?

A: YES. There was no appropriation for the purchase of the subject textbooks as the Special Allotment Release Order (SARO) in the amount of P63,638,750.00, upon which Daraga Press anchors its claim, pertains to the payment of personal services or salaries of the teachers, not for the purchase of textbooks. Since there was no appropriation for the purchase of the subject textbooks, the respondent COA had reason to deny the money claim as Section 29(1), Article VI of the 1987 Constitution provides that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law" (*Daraga Press, Inc. v. Commission on Audit, G.R. No. 201042, June 16, 2015*).

Requisites for the valid transfer of appropriated funds

The transfer of appropriated funds, to be valid under Art. VI, Section 25(5), must be made upon a concurrence of the following requisites, namely:

1. There is a law authorizing the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of the

Constitutional Commissions to transfer funds within their respective offices;

2. The funds to be transferred are savings generated from the appropriations for their respective offices; and (3) The purpose of the transfer is to augment an item in the general appropriations law for their respective offices (*Araullo, et.al v. Aquino III, et. al. G.R. No. 209287, July 1, 2014*).

Q: The Disbursement Acceleration Program (DAP) was instituted by the Department of Budget and Management in 2011 to ramp up spending after sluggish disbursements had caused the growth of the gross domestic product (GDP) to slow down. It allowed the Executive to allocate public money pooled from programmed and unprogrammed funds of its various agencies notwithstanding the original revenue targets being exceeded. In a petition, the constitutionality of the DAP was challenged, claiming that it contravened Section 29(1), Art. VI of the 1987 Constitution under the guise of the President exercising his constitutional authority under Section 25(5) of the 1987 Constitution to transfer funds out of savings to augment the appropriations of offices within the Executive Branch of the Government. Is the DAP constitutional?

A: NO. The transfers made through the DAP were unconstitutional. It is true that the President (and even the heads of the other branches of the government) are allowed by the Constitution to make realignment of funds, however, such transfer or realignment should only be made "within their respective offices". Thus, no cross-border transfers/augmentations may be allowed. But under the DAP, this was violated because funds appropriated by the GAA for the Executive were being transferred to the Legislative and other non-Executive agencies.

Further, transfers "within their respective offices" also contemplate realignment of funds to an existing project in the GAA. Under the DAP, even though some projects were within the Executive, these projects are non-existent insofar as the GAA is concerned because no funds were appropriated to them in the GAA. Although some of these projects may be legitimate, they are still non-existent under the GAA because they were not provided for by the GAA. As such, transfer to such projects is unconstitutional and is without legal basis.

These DAP transfers are not "savings" contrary to what was being declared by the Executive. Under the definition of "savings" in the GAA, savings only occur, among other instances, when there is an excess in the funding of a certain project once it is



completed, finally discontinued, or finally abandoned. The GAA does not refer to "savings" as funds withdrawn from a slow moving project. Thus, since the statutory definition of savings was not complied with under the DAP, there is no basis at all for the transfers. Further, savings should only be declared at the end of the fiscal year. But under the DAP, funds are already being withdrawn from certain projects in the middle of the year and then being declared as "savings" by the Executive particularly by the DBM.

Unprogrammed funds from the GAA cannot be used as money source for the DAP because under the law, such funds may only be used if there is a certification from the National Treasurer to the effect that the revenue collections have exceeded the revenue targets. In this case, no such certification was secured before unprogrammed funds were used (*Araullo v. Aquino III*, G.R. No. 209287, February 3, 2015).

PRESIDENTIAL VETO AND CONGRESSIONAL OVERRIDE

Rule on presentment

Every bill passed by Congress must be presented to the President for approval or veto. In the absence of presentment to the President, no bill passed by Congress can become a law.

Rule on presidential veto

GR: If the President disapproves a bill enacted by Congress, he should veto the entire bill. He is not allowed to veto separate items of a bill.

XPN: Item-veto is allowed in case of Appropriation, Revenue, and Tariff bills [1987 Constitution, Art. VI, Sec. 27(2)]. (1991, 2010 Bar)

XPNs to the XPN:

1. *Doctrine of inappropriate provisions* – A provision that is constitutionally inappropriate for an appropriation bill may be singled out for veto even if it is not an appropriation or revenue item (*Gonzales v. Macaraig*, G.R. No. 87636, Nov. 19, 1990).
2. *Executive impoundment* – Refusal of the President to spend funds already allocated by Congress for specific purpose. It is the failure to spend or obligate budget authority of any type (*Philconsa v. Enriquez*, G.R. No. 113105, August 19, 1994).

Appropriation Item or Line-item

An indivisible sum of money dedicated to a stated purpose. It is indivisible because the amount cannot be divided for any purpose other than the specific purpose stated in the item. It is an item, which, in itself, is a specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill.

An item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item" (*Araullo v. Aquino III*, G.R. No. 209287, July 1, 2014).

NOTE: For the President to exercise his item-veto power, it is necessary that there exists a proper "item" which may be the object of the veto. Consequently, to ensure that the President may be able to exercise said power, the appropriations bill must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation (*Araullo v. Aquino III*, *ibid.*).

Instances of pocket veto (2010 Bar)

1. When the President fails to act on a bill; and
2. When the reason he does not return the bill to the Congress is that Congress is not in session.

Pocket veto is NOT applicable in the Philippines because inaction by the President for 30 days never produces a veto even if Congress is in recess. The President must still act to veto the bill and communicate his veto to Congress without need of returning the vetoed bill with his veto message.

Rider

A provision in a bill which does not relate to a particular appropriation stated in the bill. Since it is an invalid provision under Art. VI, Sec. 25[2], the President may veto it as an item.

Congressional override

If, after reconsideration, $\frac{2}{3}$ of all members of such House agree to pass the bill, it shall be sent to the other House by which it shall likewise be reconsidered and if approved by $\frac{2}{3}$ of all members of that House, it shall become a law without the need of presidential approval.

NON-LEGISLATIVE POWERS

INFORMING FUNCTIONS

Informing function of Congress



The informing function of the legislature includes its function to conduct legislative inquiries and investigation and its oversight power.

The power of Congress does not end with the finished task of legislation. Associated with its principal power to legislate is the auxiliary power to ensure that the laws it enacts are faithfully executed.

The power of oversight has been held to be intrinsic in the grant of legislative power itself and integral to the checks and balances inherent in a democratic system of government. Woodrow Wilson emphasized that "Even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion." (*Opinion of J. Puno, Macalintal v. COMELEC, G.R. No. 157013, July 10, 2003*)

POWER OF IMPEACHMENT

(Please see discussion on Accountability of Public Officials under Law on Public Officers)

OTHER NON-LEGISLATIVE POWERS

1. Power to declare the existence of state of war (*1987 Constitution, Art. VI, Sec. 23, Par. 1*)

NOTE: Under *Art. VI, Sec. 23(2)*, Congress may grant the President emergency powers subject to the following conditions: **(WaLiReN)**

- a. There is a **War** or other national emergency;
 - b. The grant of emergency powers must be for a **Limited** period;
 - c. The grant of emergency powers is subject to such **Restrictions** as Congress may prescribe; and
 - d. The emergency powers must be exercised to carry out a **National** policy declared by Congress.
2. Power to act as Board of Canvassers in election of President (*1987 Constitution, Art. VII, Sec. 10*)
 3. Power to call a special election for President and Vice-President (*1987 Constitution, Art. VII, Sec. 10*)
 4. Power to judge President's physical fitness to discharge the functions of the Presidency (*1987 Constitution, Art. VII, Sec. 11*)
 5. Power to revoke or extend suspension of the privilege of the writ of habeas corpus or declaration of martial law (*1987 Constitution, Art. VII, Sec. 18*)
 6. Power to concur in Presidential amnesties. Concurrence of majority of all the members of Congress (*1987 Constitution, Art. VII, Sec. 19*)
 7. Power to concur in treaties or international agreements; concurrence of at least 2/3 of all

the members of the Senate (*1987 Constitution, Art. VII, Sec. 21*)

8. Power to confirm certain appointments/nominations made by the President (*1987 Constitution, Art. VII, Secs. 9 and 16*)
9. Power relative to natural resources (*1987 Constitution, Art. XII, Sec. 2*)
10. Power of internal organization (*1987 Constitution, Art. VI, Sec. 16*)
 - a. Election of officers
 - b. Promulgate internal rules
 - c. Disciplinary powers



EXECUTIVE DEPARTMENT

Head of the Executive Department

The President is both the head of State and head of government; hence, executive power is exclusively vested on him.

Qualifications of the President

1. Natural-born citizen of the Philippines;
2. A registered voter;
3. Able to read and write;
4. At least forty years of age on the day of the election; and
5. A resident of the Philippines for at least ten years immediately preceding such election (1987 Constitution, Art. VII, Sec. 2).

Term of Office of the President

1. The President shall be elected by direct vote of the people for a term of 6 years which shall begin at noon on the 30th day of June next following the day of the election and shall end at noon of the same date, 6 years thereafter.
2. The President shall not be eligible for any re-election.
NOTE: The Vice-President cannot serve for more than 2 successive terms.
3. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time (1987 Constitution, Art. VII, Sec. 4).

NOTE: Vice-President shall have the same qualifications and term of office and be elected with, and in the same manner, as the President. He may be removed from office in the same manner as the President (1987 Constitution, Art. VII, Sec. 3).

PRIVILEGES, INHIBITIONS AND DISQUALIFICATIONS

IMMUNITY AND PRIVILEGES

Privileges of the President and Vice-President

PRESIDENT	VICE-PRESIDENT
<ol style="list-style-type: none"> 1. Official residence; 2. Salary is determined by law and not to be decreased during his tenure. (1987 Constitution, Art. VII, Sec. 6) 3. Immunity from suit for official acts. 	<ol style="list-style-type: none"> 1. Salary shall not be decreased during his tenure; 2. If appointed to a Cabinet post, no need for Commission on Appointments' confirmation. (1987

Constitution, Art. VII,
Sec. 3)

PRESIDENTIAL IMMUNITY

Presidential or executive immunity

The President is immune from suit during his incumbency.

Rules on executive immunity

A. Rules on immunity DURING tenure (not term):

1. The President is immune from suit during his tenure (*In re: Bermudez*, G.R. No. 76180, October 24, 1986)
2. An impeachment complaint may be filed against him during his tenure. (1987 Constitution, Art. XI)
3. The President may not be prevented from instituting suit (*Soliven v. Makasiar*, G.R. No. 82585, November 14, 1988).
4. There is nothing in our laws that would prevent the President from waiving the privilege. He may shed the protection afforded by the privilege (*Soliven v. Makasiar*, *ibid.*).
5. Heads of departments cannot invoke the President's immunity (*Gloria v. CA*, G.R. No. 119903, August 15, 2000).

B. Rule on immunity AFTER tenure:

Once out of office, even before the end of the 6-year term, immunity for **non-official acts** is lost. Immunity cannot be claimed to shield a non-sitting President from prosecution for alleged criminal acts done while sitting in office (*Estrada v. Desierto*, G.R. Nos. 146710-15, March 2, 2001).

When a non-sitting President is not immune from suit for acts committed during his tenure

A non-sitting President does not enjoy immunity from suit, even though the acts were done during her tenure. The intent of the framers of the Constitution is clear that the immunity of the president from suit is concurrent only with his tenure and not his term. Former President Arroyo cannot use the presidential immunity from suit to shield herself from judicial scrutiny that would assess whether, within the context of *amparo* proceedings, she was responsible or accountable for the *abduction* of Rodriguez (*Rodriguez v. GMA*, G.R. Nos. 191805 & 193160, November 15, 2011).

When a former President cannot be impleaded



Impleading the former President as an unwilling co-petitioner, for an act she made in the performance of the functions of her office, is contrary to the public policy against embroiling the President in suits, “to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office holder’s time, also demands undivided attention. Therefore, former President GMA *cannot be impleaded* as one of the petitioners in this suit. Thus, her name is stricken off the title of this case (*Resident Marine Mammals v. Reyes, G.R. No. 180771, April 21, 2015*).

Purpose of presidential immunity

1. *Separation of powers* – viewed as demanding the executive’s independence from the judiciary, so that the President should not be subject to the judiciary’s whim (*Almonte, v. Vasquez, G.R. No. 95367, May 23, 1995*).
2. *Public convenience* – The grant is to assure the exercise of presidential duties and functions free from any hindrance or distraction, considering that the presidency is a job that, aside from requiring all of the office-holders’ time, demands undivided attention (*Soliven v. Makasiar, G.R. No. 82585, Nov. 14, 1988*).

NOTE: The immunity of the President from suit is personal to the President. It may be invoked only by the President and not by any other person. Such privilege pertains to the President by the virtue of the office and may be invoked only by the holder of that office; and not by any other person in his behalf (*Soliven v. Makasiar, ibid.*).

Principle of command responsibility

It is “an omission mode of individual criminal liability,” whereby the superior is made responsible for crimes committed by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered) (*Rubrico v. GMA, G.R. No. 183871, February 18, 2010*).

Elements of command responsibility

1. The existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate;
2. The superior knew or had reason to know that the crime was about to be or had been committed;
3. The superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof (*Rodriguez v. GMA, G.R. Nos. 191805 & 193160, November 15, 2011*).

Application of the doctrine of command responsibility in *amparo* proceedings

It should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo* (*Rubrico v. GMA, G.R. No. 183871, February 18, 2010*).

President may be held liable for extrajudicial killings and enforced disappearances as Commander-in-Chief

The President may be held accountable under the principle of command responsibility. Being the commander-in-chief of all armed forces, he necessarily possesses control over the military that qualifies him as

a superior within the purview of the command responsibility doctrine.

On the issue of knowledge, it must be pointed out that although international tribunals apply a strict standard of knowledge, *i.e.* actual knowledge, the same may nonetheless be established through circumstantial evidence. In the Philippines, a more liberal view is adopted and superiors may be charged with constructive knowledge.

Knowledge of the commission of irregularities, crimes or offenses is presumed when:

1. The acts are widespread within the government official’s area of jurisdiction;
2. The acts have been repeatedly or regularly committed within his area of responsibility; or
3. Members of his immediate staff or office personnel are involved.

As to the issue of failure to prevent or punish, it is important to note that as the commander-in-chief of the armed forces, the President has the power to effectively command, control and discipline the military. (*Rodriguez v. GMA, G.R. Nos. 191805 & 193160, Nov. 15, 2011*)

PRESIDENTIAL PRIVILEGE

Presidential or Executive Privilege (2009, 2010, 2015 Bar)

It is the power of the President and high-level executive branch officers to withhold certain types of information from Congress, the courts, and ultimately the public.

Invocation of the privilege

It must be invoked in relation to *specific categories of information* and not to categories of persons.



NOTE: A claim of the executive privilege may be valid or not depending on the ground invoked to justify it and the context in which it is made. Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information by the mere fact of being executive officials (*Senate v. Ermita, G.R. No. 169777, April 20, 2006*).

Consequently, in case where the privilege is invoked through executive orders (EOs) prohibiting executive officials from participating in legislative inquiries, the Court held that “to the extent that investigations in aid of legislation are generally conducted in public, any executive issuance tending to unduly limit disclosures of information in such investigations necessarily deprives the people of information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information which they can use in formulating their own opinions on the matter before Congress—opinions which they can then communicate to their representatives and other government officials through the various legal means allowed by their freedom of expression” (*Senate v. Ermita, ibid.*). (2009, 2010, 2015 Bar)

Persons who can invoke executive privilege

1. **President**

NOTE: Being an extraordinary power, the privilege must be wielded only by the highest official in the executive department. Thus, the President may not authorize her subordinates to exercise such power.

2. **Executive Secretary, upon proper authorization from the President**

NOTE: Executive Secretary must state that the authority is “By order of the President,” which means he personally consulted with the President.

Requirement if an official is summoned by Congress on a matter which in his own judgment might be covered by executive privilege

He must be afforded reasonable time to inform the President or the Executive Secretary of the possible need for invoking the privilege, in order to provide the same with fair opportunity to consider whether the matter indeed calls for a claim of executive privilege. If, after the lapse of that reasonable time, neither the President nor the Executive Secretary invokes the privilege, Congress is no longer bound to respect the failure of the official to appear before Congress and may then opt to avail of the necessary legal means to compel his appearance (*Senate v. Ermita, ibid.*).

Requirements in invoking the privilege

1. There must be a formal claim of the privilege; and
2. The claim has specific designation and description of the documents within its scope and with the precise and certain reasons for preserving their confidentiality.

Reason: Without this specificity, it is impossible for a court to analyze the claim short of disclosure of the very thing sought to be protected.

NOTE: Congress, however, must not require the Executive to state the reasons for the claim with such particularity as to compel disclosure of the information, which the privilege is meant to protect (*Senate v. Ermita, ibid.*).

Limitation of executive privilege

Claim of executive privilege is subject to balancing against other interest. Simply put, confidentiality in executive privilege is not absolutely protected by the Constitution. Neither the doctrine of separation of powers nor the need for confidentiality of high-level communications can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances (*Neri v. Senate, G.R. No. 180643, March 25, 2008*).

EO 464 requiring all Executive department heads to secure the consent of the President before appearing in Question Hour is valid

The requirement to secure presidential consent, limited as it is only to appearances in the question hour, is valid on its face. For unlike inquiries in aid of legislation under Sec. 21, Art. VI of the Constitution where such appearance is mandatory, under Sec. 22, the appearance of department heads in the question hour is **discretionary** on their part.

Dictated by the basic rule of construction that issuances must be interpreted, as much as possible, in a way that will render it constitutional, the said provision must be construed as applicable only to appearances in question hour under Sec. 22, not in inquiries in aid of legislation under Sec. 21. Congress is not bound in the latter instance to respect the refusal of the department head to appear in such inquiry, unless a valid claim of privilege is subsequently made, either by the President herself or by the Executive Secretary (*Senate v. Ermita, G.R. No. 169777, April 20, 2006*).

Kinds of executive privilege

1. **State secret privilege**– Invoked by Presidents on the ground that the information is of such



- nature that its disclosure would subvert crucial military or diplomatic objectives.
2. *Informer's privilege*– Privilege of the government not to disclose the identity of persons who furnish information in violations of law to officers charged with the enforcement of the law.
 3. *Generic privilege for internal deliberation*– Said to attach to intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.
 4. Presidential communications privilege;
 5. Deliberative process privilege (*In Re: Sealed Case No. 96-3124, June 17, 1997*).

Test to determine the validity of a claim of privilege: Whether the requested information falls within one of the traditional privileges and whether that privilege should be honored in a given procedural setting.

Presidential communications privilege vs. Deliberative process privilege

BASIS	PRESIDENTIAL COMMUNICATIONS PRIVILEGE	DELIBERATIVE PROCESS PRIVILEGE
<i>Scope of the privilege</i>	Pertains to communications, documents or other materials that reflect presidential decision-making and deliberations that the President believes should remain confidential	Includes advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated
<i>To whom applicable</i>	Applies to decision-making of the President	Applies to decision-making of executive officials
<i>Foundation</i>	Rooted in the constitutional principle of separation of	Rooted in common law privileges

	powers and the President's unique constitutional role	
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Presidential Communications Privilege

Elements:

1. The protected communication must relate to a "quintessential and non-delegable presidential power."
2. The communication must be authored or "solicited and received" by a close advisor of the President or the President himself. The judicial test is that an advisor must be in "operational proximity" with the President.
3. The presidential communications privilege remains a qualified privilege that may be overcome by a showing of adequate need, such that the information sought "likely contains important evidence" and by the unavailability of the information elsewhere by an appropriate investigating authority.

Presumed privilege status of presidential communications

The presumption is based on the President's generalized interest in confidentiality. The privilege is necessary to guarantee the candor of presidential advisors and to provide the President and those who assist him with freedom to explore alternatives in the process of shaping policies and making decisions and to do so in a way many could be unwilling to express except privately. The presumption can be overcome only by mere showing of public need by the branch seeking access to conversations. The courts are enjoined to resolve the competing interests of the political branches of the government "in a manner that preserves the essential functions of each Branch."

Q: The HoRs' House Committee conducted an inquiry on the Japan-Philippines Economic Partnership Agreement (JPEPA), then being negotiated by the Philippine Government. The House Committee requested DTI USec. Aquino to furnish it with a copy of the latest draft of the JPEPA. Jay replied that he shall provide a copy thereof once the negotiations are completed.

A petition was filed with the SC which seeks to obtain a copy of the Philippine and Japanese offers submitted during the negotiation process and all pertinent attachments and annexes thereto. Jay invoked executive privilege based on the ground that the information sought pertains to diplomatic negotiations then in progress. On the other hand, Akbayan for their part invoked their right to information on



matters of public concern. Are matters involving diplomatic negotiations covered by executive privilege?

A: YES. The Court held that while it is clear that the final text of the JPEPA may not be kept perpetually confidential, the offers exchanged by the parties during the negotiations continue to be privileged even after the JPEPA is published. Disclosing these offers could impair the ability of the Philippines to deal not only with Japan but also with other foreign governments in future negotiations. Thus, the DTI USec. correctly invoked executive privilege based on the ground that the information sought pertains to diplomatic negotiations then in progress (*AKBAYAN v. Aquino, G.R. No. 170516, July 16, 2008*).

NOTE: Such privilege is only *presumptive*.

Matters involving diplomatic negotiations are covered by executive privilege. However, such privilege is only presumptive. Recognizing a type of information as privileged does not mean that it will be considered privileged in all instances. Only after a consideration of the context in which the claim is made may it be determined if there is a **public interest** that calls for the disclosure of the desired information, strong enough to overcome its traditionally privileged status (*AKBAYAN v. Aquino, ibid.*).

Prohibitions attached to the President, Vice-President, Cabinet Members, and their deputies or assistants, unless otherwise provided in the Constitution (1996, 1998, 2002, 2004 Bar)

1. Shall not receive any other emolument from the government or any other source (*1987 Constitution, Art. VII, Sec. 6*).
2. Shall not hold any other office or employment during their tenure **unless**:
 - a. Otherwise provided in the Constitution (*e.g.* VP can be appointed as a Cabinet Member without the need of confirmation by Commission on Appointments; Sec. of Justice sits in the Judicial and Bar Council)
 - b. The positions are *ex-officio* and they do not receive any salary or other emoluments therefore (*e.g.* Sec. of Finance as head of the Monetary Board)

NOTE: This prohibition must not, however, be construed as applying to posts occupied by the Executive officials without additional compensation in an *ex-officio* capacity, as provided by law and as required by the primary functions of the said official's office (*National Amnesty Commission v. COA, G.R. No. 156982, September 2, 2004*).

3. Shall not practice, directly or indirectly, any other profession during their tenure
4. Shall not participate in any business
5. Shall not be financially interested in any contract with, or in any franchise, or special privilege granted by the Government, including GOCCs
6. Shall avoid conflict of interest in conduct of office
7. Shall avoid nepotism (*1987 Constitution, Art. VII, Sec. 13*).

NOTE: The spouse and relatives by consanguinity or affinity within the 4th civil degree of the President shall not, during his tenure, be appointed as:

- a. Members of the Constitutional Commissions;
- b. Office of the Ombudsman;
- c. Secretaries;
- d. Undersecretaries;
- e. Chairmen or heads of bureaus or offices, including GOCCs and their subsidiaries.

If the spouse, *etc.*, was already in any of the above offices at the time before his/her spouse became President, he/she may continue in office. What is prohibited is appointment and reappointment, not continuation in office.

Spouses, *etc.*, can be appointed to the judiciary and as ambassadors and consuls.

Q: Joey, the Chief Presidential Legal Counsel (CPLC), was also appointed as Chairman of the PCGG. May the two offices be held by the same person?

A: NO. When the Chief Presidential Legal Counsel was also appointed as Chairman of the PGCC, the Court held that the two offices are incompatible. Without question, the PCGG is an agency under the Executive Department. Thus, the actions of the PCGG Chairman are subject to the review of the CPLC (*Public Interest Group v. Elma, G.R. No. 138965, June 30, 2006*).

Q: The President appointed Kimberly as the Acting Secretary of Justice. After a couple of days, the President designated her as the Acting Solicitor General in a concurrent capacity. Julie contested the appointment of Kimberly on the ground that the appointment violated Sec. 13, Art. VII of the Constitution which expressly prohibits the President, Vice-President, the Members of the Cabinet, and their deputies or assistants from holding any other office or employment during their tenure unless otherwise provided in the Constitution. On the



other hand, Kimberly claims that according to Sec. 7, par. (2), Art. IX-B of the Constitution, her appointment to such positions is outside the coverage of the prohibition under Sec. 13 of Art. VII as it falls into one of the exceptions as being allowed by law or by the primary functions of her position. Does the designation of Kimberly as the Acting Secretary of Justice, concurrently with his position as Acting Solicitor General, violate the constitutional prohibition against dual or multiple offices for the Members of the Cabinet and their deputies and assistants?

A: YES. There is violation of the Constitution in case an Acting Secretary of Justice is designated as Acting Solicitor General because while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, **members of the Cabinet**, their deputies and assistants may do so only when expressly authorized by the Constitution itself. In other words, Sec. 7, Art. IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Sec. 13, Art. VII is meant to be the exception applicable only to the President, the Vice-President, and Members of the Cabinet, their deputies and assistants.

On its face, the language of Sec. 13, Art. VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment.

The phrase "*unless otherwise provided in this Constitution*" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself, to wit:

- a. The Vice-President being appointed as a member of the Cabinet under Sec. 3, par. (2), Art. VII; or acting as President in those instances provided under Sec. 7, pars. (2) and (3), Art. VII; and
- b. The Secretary of Justice being *ex-officio* member of the Judicial and Bar Council by virtue of Sect. 8 (1), Art. VIII (*Funa v. Agra*, G.R. No. 191644, February 19, 2013).

Sec. 13, Art. VII undoubtedly covers the Acting Secretary of Justice as being concurrently designated as Acting Solicitor General; therefore, he could not validly hold any other office or employment during his tenure as the Acting Solicitor General, because the Constitution has not otherwise so provided.

POWERS OF THE PRESIDENT

EXECUTIVE AND ADMINISTRATIVE POWERS IN GENERAL

Executive Power

Power vested in the President of the Philippines. The President shall have control of all executive departments, bureaus and offices. He shall ensure that laws are faithfully executed (*1987 Constitution, Art. VII, Sec. 17*).

Faithful Execution Clause

The power to take care that the laws be faithfully executed makes the President a dominant figure in the administration of the government. The law he is supposed to enforce includes the Constitution, statutes, judicial decisions, administrative rules and regulations and municipal ordinances, as well as treaties entered into by the government.

Scope of executive power

1. Executive power is vested in the President of the Philippines. (*1987 Constitution, Art. VII, Sec. 1*).
2. It is not limited to those set forth in the Constitution (**Residual powers**) (*Marcos v. Manglapus*, G.R. No. 88211, October 27, 1989).
3. Privilege of immunity from suit is personal to the President and may be invoked by him alone. It may also be waived by the President, as when he himself files suit (*Soliven v. Makasiar*, G.R. No. 82585, November 14, 1988).

Specific powers of the President

1. Appointing power (*1987 Constitution, Art. VII, Sec. 16*)
2. Power of control over all executive departments, bureaus and offices (*1987 Constitution, Art. VII, Sec. 17*)
3. Commander-in-Chief powers (calling-out power, power to place the Philippines under martial law, and power to suspend the privilege of the writ of habeas corpus) (*1987 Constitution, Art. VII, Sec. 18*)
4. Pardoning power (*1987 Constitution, Art. VII, Sec. 19*)
5. Borrowing power (*1987 Constitution, Art. VII, Sec. 20*)
6. Diplomatic/Treaty-making power (*1987 Constitution, Art. VII, Sec. 21*)
7. Budgetary power (*1987 Constitution, Art. VII, Sec. 22*)
8. Informing power (*1987 Constitution, Art. VII, Sec. 23*)
9. Veto power (*1987 Constitution, Art. VI, Sec. 27*)



10. Power of general supervision over local governments (1987 Constitution, Art. X, Sec. 4)
11. Power to call special session (1987 Constitution, Art. VI, Sec. 15)

Administrative power

Power concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations (*Ople v. Torres*, G.R. No. 127685, July 23, 1998).

Power of administrative reorganization

The President has the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials; it is effected in good faith if it is for the purpose of economy or to make bureaucracy more efficient (*MEWAP v. Exec. Sec.*, G.R. No. 160093, July 31, 2007).

POWER OF APPOINTMENT (1991, 1994, 1999, 2002, 2005 Bar)

Appointment

The selection of an individual who is to exercise the functions of a given office. It may be made verbally but it is usually done in writing through what is called the commission.

NOTE: The appointing power of the President is executive in nature. While Congress and the Constitution in certain cases may prescribe the qualifications for particular offices, the determination of who among those who are qualified will be appointed is the President's prerogative (*Pimentel v. Ermita*, G.R. No. 164978, October 13, 2005).

Note: Although intrinsically executive and therefore pertaining mainly to the President, the appointing power may be exercised by the legislature and by the judiciary, as well as the Constitutional Commissions, over their respective personnel.

Kinds of Presidential appointments

1. Appointments made by an Acting President;
2. Midnight Appointment; (1987 Constitution, Art. VII, Sec. 15)
3. Regular Presidential Appointments, with or without the confirmation by the CA; or
4. Ad-interim Appointments.

Elements in making a valid, complete, and effective Presidential appointment: (ATVA)

1. Authority to appoint *and* evidence of the exercise of the authority;
2. Transmittal of the appointment paper signed by the President *and* evidence of the transmittal;

NOTE: It is not enough that the President signs the appointment paper. There should be evidence that the President intended the appointment paper to be issued. Release of the appointment paper through the Malacañang Records Office (MRO) is an unequivocal act that signifies the President's intent of its issuance.

3. A Vacant position at the time of appointment;

NOTE: The incumbent must first be legally removed, or his appointment validly terminated, before one could be validly installed to succeed him.

4. Receipt of the appointment paper *and* Acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications

NOTE: The possession of the original appointment paper is not indispensable to authorize an appointee to assume office. If it were indispensable, then a loss of the original appointment paper, which could be brought about by negligence, accident, fraud, fire or theft, corresponds to a loss of the office. However, in case of loss of the original appointment paper, the appointment must be evidenced by a certified true copy issued by the proper office, in this case the Malacañang Records Office.

NOTE: Acceptance is indispensable to complete an appointment. Assuming office and taking the oath amount to acceptance of the appointment. An oath of office is a qualifying requirement for a public office, a prerequisite to the full investiture of the office.

Concurrence of all these elements should always apply, regardless of when the appointment is made, whether outside, just before, or during the appointment ban. These steps in the appointment process should always concur and operate as a single process. There is no valid appointment if the process lacks even one step. And there is no need to further distinguish between an effective and an ineffective appointment when an appointment is valid (*Velicaria-Garafil v. Office of the President*, G.R. No. 203372, June 16, 2015).



Non-justiciability of appointments

Appointment is a political question. So long as the appointee satisfies the minimum requirements prescribed by law for the position, the appointment may not be subject to judicial review.

Rule on the effectivity of appointments made by an Acting President

Shall remain effective unless revoked by the elected President within 90 days from his assumption/re-assumption (1987 Constitution, Art. VII, Sec. 14).

Designation

The imposition of additional duties on a person already in the public service. It is considered only as an acting or temporary appointment, which does not confer security of tenure on the person named (*Binamira v. Garrucho*, G.R. No. 92008, July 30, 1990).

NOTE: The President has the power to temporarily designate an officer already in the government service or any other competent person to perform the functions of an office in the executive branch. Temporary designation **cannot exceed one year**.

Appointments made solely by the President

1. Those vested by the Constitution on the President alone;
2. Those whose appointments are not otherwise provided by law;
3. Those whom he may be authorized by law to appoint; and
4. Those other officers lower in rank whose appointment is vested by law in the President alone (1987 Constitution, Art. VII, Sec. 16).

Presidential appointments that need prior recommendation or nomination by the Judicial and Bar Council

1. Members of the Supreme Court and all lower courts (1987 Constitution, Art. VIII, Sec. 9).
2. Ombudsman and his 5 deputies

COMMISSION ON APPOINTMENTS CONFIRMATION

Appointments where confirmation of the Commission on Appointments is required (HA²O)

1. Heads of executive departments
GR: Appointment of cabinet secretaries requires confirmation.

XPN: Vice-president may be appointed as a member of the Cabinet and such appointment requires no confirmation [1987 Constitution, Art. VII, Sec. 3(2)].

2. Ambassadors, other public ministers and consuls– Those connected with the diplomatic and consular services of the country.
3. Officers of AFP from the rank of colonel or naval captain
NOTE: PNP of equivalent ranks and the Philippine Coast Guard is not included.
4. Other officers of the government whose appointments are vested in the President in the Constitution (1987 Constitution, Art. VII, Sec. 16), such as:
 - a. Chairmen and members of the CSC, COMELEC and COA [1987 Constitution, Art. IX-B, C, D, Sec. 1(2)]
 - b. Regular members of the JBC [1987 Constitution, Art. VIII, Sec. 8(2)]

NOTE: The enumeration is *exclusive*.

Appointing procedure for those that need Commission's confirmation

1. Nomination by the President
2. Confirmation by the CA
3. Issuance of commission
4. Acceptance by the appointee

NOTE: At any time, before all four steps have been complied with, the President can withdraw the nomination and appointment (*Lacson v. Romero*, R. No. L-3081, October 14, 1949).

Appointments where confirmation of the Commission on Appointments is NOT required:

1. All other officers of the Government whose appointments are not otherwise provided for by law
2. Those whom the President may be authorized by law to appoint
3. Officers lower in rank whose appointments the Congress may by law vest in the President alone (*Manalo v. Sistoza*, 312 SCRA 239, August 11, 1999, *En Banc*).

Procedure for those that do not need the Commission's confirmation

1. Appointment
2. Acceptance

Ad interim Appointment

Power of the President to make appointments **during the recess of Congress**, but such appointments shall be effective only until



disapproval by the Commission on Appointments or until the next adjournment of the Congress (*Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002).

Purpose of ad interim appointment

Ad interim appointments are intended to prevent a hiatus in the discharge of official duties. Obviously, the public office would be immobilized to the prejudice of the people if the President had to wait for Congress and the Commission of Appointments to reconvene before he could fill a vacancy occurring during the recess (*Guevara v. Inocentes*, G.R. No. L-25577, March 15, 1966).

Nature of ad interim appointment

Ad interim appointments are permanent appointments. It is permanent because it takes effect immediately and can no longer be withdrawn by the President once the appointee qualified into office. The fact that it is subject to confirmation by the CA does not alter its permanent character. In cases where the term of said ad interim appointee had expired by virtue of inaction by the Commission on Appointments, he may be reappointed to the same position without violating the Constitutional provision prohibiting an officer whose term has expired from being re-appointed (*Matibag v. Benipayo*, G.R. No. 130657, April 1, 2002).

NOTE: Being a permanent appointment, an *ad interim* appointee pending action by the Commission on Appointments enjoys security of tenure (*Marombhosar v. CA*, G.R. No. 126481, February 18, 2000).

Ad interim appointment vs. Appointment in an Acting Capacity

BASIS	AD INTERIM APPOINTMENT	APPOINTMENT IN AN ACTING CAPACITY
When made	Made during the recess of Congress	Made at any time there is vacancy, i.e., whether Congress is in session or not
As to confirmation of the Commission	Requires confirmation of the	Does not require confirmat

on	Commissi on	ion of the Commissi on
Nature	Permanent in nature	Temporary in nature
As to security of tenure	Appointe e enjoys security of tenure	Appointe e does not enjoy security of tenure

Permanent Appointment vs. Temporary Appointment

BASIS	PERMANENT APPOINTMENT	TEMPORARY APPOINTMENT
As to persons appointed	Extended to persons possessing the requisite eligibility	Given to persons without such eligibility;
As to acts of the appointee	Not revocable at will	Revocable at will without the necessity of just cause or a valid investigation; appointing power has full discretion to change

(See further discussion under Law on Public Officers)

President may appoint Acting Secretaries without the consent of the Commission while the Congress is in session

Congress, through a law, cannot impose on the President the obligation to appoint automatically the undersecretary as her temporary alter ego. An alter ego, whether temporary or permanent, holds a position of great trust and confidence. The office of a department secretary may become vacant while Congress is in session. Since a department secretary is the alter ego of the President, the acting appointee to the office must necessarily have the President's confidence (*Pimentel v. Ermita*, G.R. No. 164978, October 13, 2005).



NOTE: Acting appointments **cannot exceed one year** [EO 292, Book III, Title I, Chapter 5, Sec. 17 (3)]

Limitations on the appointing power of the President

1. The spouse and relatives by consanguinity or affinity within the 4th civil degree of the President shall not, during his "tenure" be appointed as:
 - a. Members of the Constitutional Commissions;
 - b. Member of the Office of Ombudsman;
 - c. Secretaries;
 - d. Undersecretaries;
 - e. Chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries (1987 Constitution, Art. VII, Sec. 13[2]).
2. Appointments made by the acting-President shall remain effective unless revoked within 90 days from assumption of office by elected President (1987 Constitution, Art. VII, Sec. 14).
3. **GR:** Two months immediately before the next Presidential elections (2nd Monday of May), and up to the end of his "term" (June 30), a President (or Acting President) shall not make appointments.
XPN: Temporary appointments, to executive positions, when continued vacancies therein will prejudice public service (1987 Constitution, Art. VII, Sec. 15), e.g. Postmaster; or endanger public safety, e.g. Chief of Staff. (1991, 1997 Bar)

MIDNIGHT APPOINTMENTS

Prohibited appointments under Sec. 15, Art. VII of the Constitution

1. *Those made for buying votes*– Refers to those appointments made within two months preceding the Presidential election and are similar to those which are declared election offenses in the Omnibus Election Code; and
2. *Those made for partisan considerations*– Consists of the so-called **"midnight" appointments** (In Re: Hon. Valenzuela and Hon. Vallarta, A.M. No. 98-5-01-SC, November 9, 1998).

Q: Does the prohibition against appointments provided under Sec. 15, Art VII of the Constitution apply to appointments to the judiciary?

A: NO. Art. VII is devoted to the Executive Department. Had the framers intended to extend the

prohibition contained in Sec. 15, Art. VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have easily and surely written the prohibition made explicit in Sec. 15, Art. VII as being equally applicable to the appointment of Members of the Supreme Court in Art. VIII itself, most likely in Sec. 4 (1), Art. VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court (*De Castro v. JBC*, G.R. No. 191002, March 17, 2010).

Q: President Arroyo appointed Atty. Velicaria-Garafil as State Solicitor II on 5 March 2010. The appointment paper was transmitted on 8 March 2010 and was received by the Malacañang Records Office (MRO) on 13 May 2010. Atty. Velicaria-Garafil, on the other hand, took her oath of office on 22 March 2010 and assumed thereto 6 April 2010. The cut-off date for valid presidential appointments was on 10 March 2010 or two months preceding the 10 May 2010 elections. Upon assumption of President Aquino III, he issued E.O. No. 2 recalling, withdrawing, and revoking all midnight appointments of President Arroyo which includes all appointments bearing dates prior to 11 March 2010 where the appointee has accepted, or taken his oath, or assumed public office on or after 11 March 2010. Atty. Velicaria-Garafil asserts the validity of her appointment and now questions the constitutionality of E.O. No. 2. Decide.

A: E.O. No. 2 is constitutional. Atty. Velicaria-Garafil's appointment is a midnight appointment and is void for violation of Art. VII, Sec. 15 of the 1987 Constitution. Appointment to a government post is a process that takes several steps to complete. Any valid appointment, including one made under the exception provided in Section 15, Article VII of the 1987 Constitution, must consist of the President signing an appointee's appointment paper to a vacant office, the official transmittal of the appointment paper (preferably through the MRO), receipt of the appointment paper by the appointee, and acceptance of the appointment by the appointee evidenced by his or her oath of office or his or her assumption to office. The purpose of the prohibition on midnight appointments is to prevent a President, whose term is about to end, from preempting his successor by appointing his own people to sensitive positions (*Velicaria-Garafil v. Office of the President*, G.R. No. 203372, June 16, 2015)



Q: Supposing that Atty. Velicaria-Garafil's appointment and its transmittal are made before the ban (11 March 2010) but she took her oath and assumed (acceptance of appointment) as State Solicitor II only after the ban, is the appointment still a midnight appointment?

A: YES. The President exercises only one kind of appointing power. There is no need to differentiate the exercise of the President's appointing power outside, just before, or during the appointment ban. The Constitution allows the President to exercise the power of appointment during the period not covered by the appointment ban, and disallows (subject to an exception) the President from exercising the power of appointment during the period covered by the appointment ban. **The concurrence of all steps in the appointment process is admittedly required for appointments outside the appointment ban.** There is no justification whatsoever to remove acceptance as a requirement in the appointment process for appointments just before the start of the appointment ban, or during the appointment ban in appointments falling within the exception. The existence of the appointment ban makes no difference in the power of the President to appoint; it is still the same power to appoint. **In fact, considering the purpose of the appointment ban, the concurrence of all steps in the appointment process must be strictly applied on appointments made just before or during the appointment ban** (*Velicaria-Garafil v. Office of the President, ibid.*).

Prohibition on midnight appointments only applies to presidential appointments

The prohibition on midnight appointments only applies to presidential appointments. It does not apply to appointments made by local chief executives. Nevertheless, the Civil Service Commission has the power to promulgate rules and regulations to professionalize the civil service. It may issue rules and regulations prohibiting local chief executives from making appointments during the last days of their tenure. Appointments of local chief executives must conform to these civil service rules and regulations in order to be valid (*Provincial Government of Aurora v. Marco, G.R. No. 202331, April 22, 2015*).

POWER OF REMOVAL

Power of Removal

GR: From the express power of appointment, the President derives the implied power of removal.

XPN: Not all officials appointed by the President are also removable by him since the Constitution prescribes certain methods for the separation from the public service of such officers
e.g. impeachment

NOTE: The President is without any power to remove elected local officials since the power is exclusively provided in the last paragraph of Section 60 of the Local Government Code.

Source of the President's Power of Removal

The President derives his implied power of removal from other powers expressly vested in him.

1. It is implied from his power to appoint.
2. Being executive in nature, it is implied from the constitutional provision vesting the executive power in the President.
3. It may be implied from his function to take care that laws be properly executed; for without it, his orders for law enforcement might not be effectively carried out.
4. The power may be implied from the President's control over the administrative departments, bureaus, and offices of the government. Without the power to remove, it would not be always possible for the President to exercise his power of control.

NOTE: Members of the career service of the Civil Service who are appointed by the President may be directly disciplined by him. (*Villaluz v. Zaldivar, G.R. No. L-22754, Dec. 31, 1965*) provided that the same is for cause and in accordance with the procedure prescribed by law.

Members of the Cabinet and such officers whose continuity in office depend upon the President may be replaced at any time. Legally speaking, their separation is effected not by the process of removal but by the expiration of their term (*Aparri v. CA, G.R. No. L-30057, January 31, 1984*).

The President has no disciplinary authority over the Ombudsman

Sec. 8(2) of RA 6770 vesting disciplinary authority on the President over the Deputy Ombudsman violates the independence of the Office of the Ombudsman and is, thus, unconstitutional.

Subjecting the Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself. The law directly collided not only with the independence that the Constitution guarantees to the Office of the



Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize. What is true for the Ombudsman must be equally and necessarily true for her Deputies who act as agents of the Ombudsman in the performance of their duties (*Gonzales III v. Ochoa, G. R. No. 196231; Barreras-Sulit v. Ochoa, G.R. No. 196232; February 26, 2014*).

POWER OF CONTROL AND SUPERVISION

The President shall have control of all executive departments, bureaus and offices. (1987 Constitution, Art. VII, Sec. 17)

Power of Control

The power of an officer to alter or modify or nullify or to set aside what a subordinate has done in the performance of his duties and to substitute one's own judgment for that of a subordinate.

Q: Clarence sued PGA Cars before the DTI pursuant to the Consumer Act (R.A. 7394) due to the defect in the BMW he bought from the latter. DTI sided with Clarence. PGA Cars appealed before the Office of the President (OP) which reversed the DTI's decision. Clarence elevated the matter before the CA through Rule 65 and argued that the OP had no appellate jurisdiction over DTI's decision. The OP countered that it has an appellate jurisdiction over DTI on the ground that the President's power of control over the executive department grants him the power to amend, modify, alter or repeal decisions of the department secretaries. Decide.

A: Clarence is correct. The executive power of control over the acts of department secretaries is laid down in Section 17, Article VII of the 1987 Constitution. The power of control has been defined as the "power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."

Such "executive control" is **not** absolute. The definition of the structure of the executive branch of government, and the corresponding degrees of administrative control and supervision is not the exclusive preserve of the executive. It may be effectively limited by the Constitution, by law, or by judicial decisions. All the more in the matter of appellate procedure as in the instant case. Appeals are remedial in nature; hence, constitutionally subject to this Court's rulemaking power. The Rules of Procedure was issued by the Court pursuant to Section 5, Article VIII of the Constitution, which

expressly empowers the Supreme Court to promulgate rules concerning the procedure in all courts.

Parenthetically, Administrative Order (A.O.) No. 18 expressly recognizes an exception to the remedy of appeal to the Office of the President from the decisions of executive departments and agencies. Under Section 1 thereof, a decision or order issued by a department or agency need not be appealed to the Office of the President when there is a special law that provides for a different mode of appeal.

In this case, a special law, RA 7394, expressly provided for immediate judicial relief from decisions of the DTI Secretary by filing a petition for certiorari with the "proper court." Hence, private respondent should have elevated the case directly to the CA through a petition for certiorari (*Moran v. Office of the President, G.R. No. 192957, Sept. 29, 2014*).

NOTE: The President's power over GOCCs comes from statute, not from the Constitution, hence, it may be taken away by statute.

The President has full control of all the members of his Cabinet. He may appoint them as he sees fit, shuffle them at pleasure, and replace them in his discretion without any legal inhibition whatever. However, such control is exercisable by the President only over the acts of his subordinates and not necessarily over the subordinate himself. (*Ang-Angco v. Castillo, G.R. No. L-17169, November 30, 1963*)

DOCTRINE OF QUALIFIED POLITICAL AGENCY

"Doctrine of Qualified Political Agency" or "Alter Ego Principle" (2014, 2015 Bar)

The acts of the secretaries of the Executive departments performed and promulgated in the regular course of business are presumptively the acts of the Chief Executive (*Villena v. Sec. of the Interior, G.R. No. L-46570, April 21, 1939*).

XPNS to the Alter Ego doctrine

1. If the acts are **disapproved or reprobated** by the President;
2. If the President is **required to act in person** by law or by the Constitution.
e.g. executive clemency

NOTE: It would appear though that doctrine of qualified political agency would not be applicable to acts of cabinet secretaries done in their capacity as ex-officio board directors of a GOCC of which they become a member not by appointment of the President but by authority of law (*See: Trade and*



Investment Development Corporation of the Philippines v. Manalang-Demigillo, G.R. Nos. 168613 & 185571).

Essence of the Alter Ego doctrine

Since the President is a busy man, he is not expected to exercise the totality of his power of control all the time. He is not expected to exercise all his powers in person. He is expected to delegate some of them to men of his confidence, particularly to members of his Cabinet.

NOTE: Applying this doctrine, the power of the President to reorganize the National Government may be validly delegated to his Cabinet Members exercising control over a particular executive department (*DENR v. DENR Region XII Employees, G.R. No. 149724, August 19, 2003*).

Q: The Toll Regulatory Board (TRB) and PNCC executed the Amendment to the Supplemental Toll Operation Agreement (ASTOA). The ASTOA incorporated the amendments to cover the design and construction of Stage 2 of the South Metro Manila Skyway. The DOTC Secretary then approved the ASTOA. Risa Hontiveros assailed the DOTC Secretary's approval on the ground that it could not take the place of the presidential approval required under P.D. 1113 and P.D. 1894 concerning the franchise granted to PNCC. Is Risa Correct?

A: NO. The doctrine of qualified political agency declares that, save in matters on which the Constitution or the circumstances require the President to act personally, executive and administrative functions are exercised through executive departments headed by cabinet secretaries, whose acts are presumptively the acts of the President unless disapproved by the latter. There can be no question that the act of the secretary is the act of the President, unless repudiated by the latter. In this case, approval of the ASTOA by the DOTC Secretary had the same effect as approval by the President. The same would be true even without the issuance of E.O. 497, in which the President, on 24 January 2006, specifically delegated to the DOTC Secretary the authority to approve contracts entered into by the TRB. Risa's reliance on P.D. 1113 and P.D. 1894 is misplaced. When we say that the approval by the DOTC Secretary in this case was approval by the President, it was not in connection with the franchise of PNCC, as required under P.D. 1113 and P.D. 1894. Rather, the approval was in connection with the powers of the TRB to enter into contracts on behalf of the government as provided under Section 3(a) of P.D. 1112 (*Hontiveros-Baraquel v. Toll Regulatory Board, G.R. No. 181293, February 23, 2015*).

Q: Atty. Alcantara questioned R.A. 9337 which authorizes the President, upon recommendation of the Secretary of Finance, to raise the VAT rate to 12%. Atty. Alcantara argues that said law is unconstitutional since the law effectively nullified the President's power of control over the Secretary of Finance by mandating the raising of the VAT rate upon the latter's recommendation. Is Atty. Alcantara correct?

A: NO. In making his recommendation to the President, the Secretary of Finance is not acting as the alter ego of the President or even her subordinate. In such instance, he is not subject to the power of control and direction of the President. He is acting as the agent of the legislative department, to determine and declare the event upon which its expressed will is to take effect. The Secretary of Finance becomes the means or tool by which legislative policy is determined and implemented, considering that he possesses all the facilities to gather data and information and has a much broader perspective to properly evaluate them. Thus, being the agent of Congress and not of the President, the President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former for that of the latter (*ABAKADA v. Exec. Sec., G.R. No. 168056, September 1, 2005*).

NOTE: As a rule, an aggrieved party need not appeal to the Office of the President the decision of a cabinet secretary and may file a petition for *certiorari* directly with the court assailing the act of the said secretary. His acts are presumed to be of the President's unless disapproved or reprobated by him (*Manubay v. Garilao, G.R. No. 140717, April 16, 2009*).

EXECUTIVE DEPARTMENTS AND OFFICES

Department Heads may exercise power of control in behalf of the President including the power to reverse the judgment of an inferior officer.

For instance, the Sec. of Justice may reverse the judgment of a prosecutor and direct him to withdraw information already filed. One, who disagrees, however, may appeal to the Office of the President in order to *exhaust administrative remedies* prior filing to the court.

Also, the Executive Secretary when acting "by authority of the President" may reverse the decision of another department secretary (*Lacson-Magallanes v. Paño, G.R. No. L-27811, November 17, 1967*).



LOCAL GOVERNMENT UNITS

Power of General Supervision

The power of a superior officer to ensure that the laws are faithfully executed by subordinates.

The power of the President over **LGUs** is only of general supervision. Thus, he can only interfere in the affairs and activities of a LGU if he finds that the latter acted contrary to law.

The President or any of his alter egos cannot interfere in local affairs as long as the concerned LGU acts within the parameters of the law and the Constitution. Any directive, therefore, by the President or any of his alter egos seeking to alter the wisdom of a law-conforming judgment on local affairs of a LGU is a patent nullity, because it *violates the principle of local autonomy*, as well as the *doctrine of separation of powers* of the executive and the legislative departments in governing municipal corporations (*Dadole v. COA*, G.R. No. 125350, December 3, 2002).

Control vs. Supervision

BASIS	CONTROL	SUPERVISION
<i>Nature</i>	An officer in control lays down the rules in the doing of an act.	The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules.
<i>As to discretion of the officer</i>	If the rules are not followed, the officer in control may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself.	The supervisor does not have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. (<i>Drilon v. Lim</i> , G.R. No. 112497, Aug. 4, 1994)

NOTE: The power of supervision does not include the power of control; but the power of control necessarily includes the power of supervision.

MILITARY POWERS
In re **COMMANDER-IN-CHIEF POWERS**
(1991, 1997, 2000, 2006, 2015 Bar)

Scope of the President's Commander-in-Chief Powers

1. **COMMAND OF THE ARMED FORCES**– absolute authority over the persons and actions of the members of the armed forces (*Gudani v. Senga*, G.R. No. 170165, Aug. 15, 2006).

NOTE: By making the President the Commander-in-Chief of all the armed forces, the principle announced in Sec. 3, Art. II is bolstered. Thus, the Constitution lessens the danger of a military take-over of the government in violation of its republican nature.

The President as Commander-in-Chief can prevent the Army General from appearing in a legislative investigation and, if disobeyed, can subject him to court martial (*Gudani v. Senga*, G.R. No. 170165, August 15, 2006).

2. **CALLING-OUT POWERS**– Call the armed forces to prevent or suppress lawless violence, invasion, or rebellion. The only criterion for the exercise of this power is that whenever it becomes necessary.

NOTE: The declaration of a state of emergency is merely a description of a situation which authorizes her to call out the Armed Forces to help the police maintain law and order. It gives no new power to her, nor to the police. Certainly, it does not authorize warrantless arrests or control of media (*David v. GMA*, G.R. No. 171409, May 3, 2006). **(2015 Bar)**

The Constitution does not require the President to declare a state of rebellion to exercise her calling out power. Sec. 18, Art. VII grants the President, as Commander-in-Chief a “sequence” of “graduated powers” (*Sanlakas v. Exec. Sec.*, G.R. No. 159085, February 3, 2004). **(2015 Bar)**

3. **SUSPENSION of the privilege of the writ of habeas corpus**

NOTE: What is permitted to be suspended by the President is not the writ itself but its privilege.

WRIT OF HABEAS CORPUS

PRIVILEGE OF THE WRIT



An order from the court commanding a detaining officer to inform the court if he has the person in custody, and what his basis is in detaining that person.	That portion of the writ requiring the detaining officer to show cause why he should not be tested.
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Requisites for the suspension of the privilege of the writ of *habeas corpus*

1. There must be an **invasion or rebellion**; and
2. **Public safety requires** the suspension

NOTE: The invasion and rebellion must be *actual* and not merely imminent.

Non-impairment of the right to bail

The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. (1987 Constitution, Art. III, Sec. 13)

Limitations on the suspension of the privilege of writ of *habeas corpus*

1. Applies only to persons **judicially charged** for *rebellion* or offenses inherent in or directly connected with *invasion*; and
2. Anyone arrested or detained during suspension **must be charged within 3 days**. Otherwise, he should be released.

Role of the Supreme Court in reviewing the factual bases of the promulgation of the suspension of the privilege of the writ of *habeas corpus*

Although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of *habeas corpus* is **first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court**. (*Fortun v. GMA, G.R. No. 190293, March 20, 2012*)

3. *He may proclaim MARTIAL LAW over the entire Philippines or any part thereof.*

Nature of martial law

Martial law is a joint power of the President and the Congress. Thus: **(60-48-24-jointly)**

1. The President's proclamation or suspension is temporary, good for only **60 days**;
2. He must, within **48 hours** of the proclamation or suspension, report his action in person or in writing to Congress;
3. Both houses of Congress, if not in session must jointly convene within **24 hours** of the proclamation or suspension for the purpose of reviewing its validity; and
4. The Congress, voting **jointly**, may *revoke or affirm* the President's proclamation or suspension, allow their limited effectivity to *lapse, or extend* the same if Congress deems warranted.

It is evident that under the 1987 Constitution the President and the Congress exercise the power sequentially and jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have (*Fortun v. GMA, ibid.*).

Guidelines in the declaration of martial law (IR-PS-60-48-jointly)

1. There must be an **Invasion or Rebellion, and**
2. **Public Safety** requires the proclamation of martial law all over the Philippines or any part thereof.
3. *Duration:* Not more than **60 days** following which it shall be automatically lifted unless extended by Congress.
4. *Duty of the President to report to Congress:* within **48 hours** personally or in writing.
5. *Authority of Congress to affirm or revoke or allow the lapse or extend the effectivity of proclamation:* by majority vote of all of its members voting **jointly**.

NOTE: Once revoked by Congress, the President cannot set aside the revocation.

Limitations on the declaration of martial law

1. It does not suspend the operation of the Constitution;
2. It does not supplant the functioning of the civil courts or legislative assemblies;
3. It does not authorize conferment of jurisdiction over civilians where civil courts are able to function;

NOTE: Civilians cannot be tried by military courts if the civil courts are open and functioning. (**Open Court Doctrine**) (*Olaguer*



v. Military Commission No. 34, G.R. No. L-54558, May 22, 1987).

4. It does not automatically suspend the privilege of the writ of *habeas corpus* (1987 Constitution, Art. VII, Sec. 18 (2)).

NOTE: When martial law is declared, no new powers are given to the President; no extension of arbitrary authority is recognized; no civil rights of individuals are suspended. The relation of the citizens to their State is unchanged. The Supreme Court cannot rule upon the correctness of the President's actions but only upon its arbitrariness.

Ways to lift the proclamation of martial law

1. Lifting by the President himself
2. Revocation by Congress
3. Nullification by the SC
4. By operation of law after 60 days

Q: In light of recent attacks in Marawi City by the Maute group and other terrorist organizations, President Duterte declared a state of martial law and suspended the privilege of the writ of habeas corpus in the whole of Mindanao, invoking as factual basis a written report pointing out that for decades, Mindanao has been plagued with rebellion and lawless violence which only escalated and worsened with the passing of time and the strategic location of Marawi City and its crucial role in Mindanao and the Philippines as a whole. Is the factual basis for the proclamation sufficient, and therefore constitutional?

A: YES. The President deduced from the facts available to him that there was an armed public uprising, the culpable purpose of which was to remove from the allegiance to the Philippine Government a portion of its territory and to deprive the Chief Executive of any of his powers and prerogative, leading the President to believe that there was probable cause that the crime of rebellion was and is being committed and that public safety requires the imposition of martial law and suspension of the privilege of the writ of habeas corpus. Section 18, Article VII of the Constitution itself sets the parameters for determining the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus, namely (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power. Without the concurrence of the two conditions, the President's declaration of martial law and/or suspension of the privilege of the writ of habeas corpus must be struck down. A review of the aforesaid facts similarly leads the Court to conclude that the President, in issuing

Proclamation No. 216, had sufficient factual bases tending to show that actual rebellion exists. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, the President satisfactorily discharged his burden of proof. After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of habeas corpus. (*Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017).

Actual use of the Armed Forces NOT subject to judicial review

While the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law is subject to judicial review, the *actual use by the President of the armed forces is not*. Thus, troop deployments in times of war are subject to the President's judgment and discretion (*IBP v. Zamora*, G.R. No. 141284, August 15, 2000).

Calling out power does not need Congressional authority

There is no need for congressional authority to exercise the calling out power of the President since calling out of the armed forces to prevent or suppress lawless violence is a power that the Constitution directly vests in the President. As in the case where the President did not proclaim a national emergency but only a state of emergency in 3 places in Mindanao and she did not act pursuant to any law enacted by Congress that authorized her to exercise extraordinary powers (*Ampatuan v. Hon. Puno*, G.R. No. 190259, June 7, 2011).

Q: May the President, in the exercise of peace negotiations, agree to pursue reforms that would require new legislation and constitutional amendments, or should the reforms be restricted only to those solutions which the present laws allow?

A: If the President is to be expected to find means for bringing this conflict to an end and to achieve lasting peace in Mindanao, then he must be given the leeway to explore, in the course of peace negotiations, solutions that may require changes to the Constitution for their implementation. So long as the President limits himself to **recommending** these changes and submits to the proper procedure for constitutional amendment and revision, his mere recommendation need not be construed as



unconstitutional act. Given the limited nature of the President's authority to **propose** constitutional amendments, he cannot guarantee to any third party that the required amendments will eventually be put in place, nor even be submitted to a plebiscite. The most she could do is submit these proposals as recommendations either to Congress or the people, in whom constituent powers are vested (*Province of North Cotabato v. GRPs Peace panel on Ancestral Domain*, G.R. No. 183591, October 14, 2008).

Role of the Supreme Court in inquiring into the factual bases of the President's declaration of a state of national emergency

While it is true that the Court may inquire into the factual bases for the President's exercise of the above power, it would generally defer to her judgment on the matter. It is clearly to the President that the Constitution entrusts the determination of the need for calling out the armed forces to prevent and suppress lawless violence. Unless it is shown that such determination was attended by grave abuse of discretion, the Court will accord respect to the President's judgment (*Ampatuan v. Hon. Puno*, G.R. No. 190259, June 7, 2011).

PARDONING POWER (1993, 1995, 1997, 1999, 2005, 2015)

Pardon

An act of grace, which exempts individual on whom it is bestowed from punishment, which the law inflicts for a crime he has committed. As a consequence, pardon granted after conviction frees the individual from all the penalties and legal disabilities and restores him to all his civil rights. But unless expressly grounded on the person's innocence (which is rare), it cannot bring back lost reputation for honesty, integrity and fair dealing. (*Monsanto v. Factoran*, G.R. No. 78239, Feb. 9, 1989)

NOTE: Because pardon is an act of grace, no legal power can compel the President to give it. Congress has no authority to limit the effects of the President's pardon, or to exclude from its scope any class of offenders. Courts may not inquire into the wisdom or reasonableness of any pardon granted by the President.

Purpose of pardon

To relieve the harshness of the law or correcting mistakes in the administration of justice. The power of executive clemency is a **non-delegable power** and must be exercised by the President **personally**.

NOTE: Clemency is not a function of the judiciary; it is an **executive function**. The grant is discretionary, and may not be controlled by the legislature

(Congress) as to limit the effects of the President's pardon, or to exclude from its scope any class of offenders. Also, the Courts may not inquire into the wisdom or reasonableness of any pardon granted by the President or have it reversed, save only when it contravenes its limitations. It includes cases involving both criminal and administrative cases.

Kinds of executive clemency (FPARC)

1. **Pardons** (conditional or plenary);
2. **Reprieves**;
3. **Commutations**;
4. **Remission of Fines and Forfeitures**; and
5. **Amnesty**

NOTE:

Executive Clemency	Requirement
Pardons	Requires conviction by final judgment
Reprieves	
Commutations	
Remission of Fines and Forfeitures	
Amnesty	Requires concurrence of Congress

LIMITATIONS ON THE PRESIDENT'S PARDONING POWER (CAN-F, CANNOT-CLIEP) (2015 BAR)

1. Can be granted only **after conviction by Final judgment**
XPN: AMNESTY
2. Cannot be granted in cases of civil or legislative **Contempt**.
3. Cannot absolve convict of **civil Liability**.
4. Cannot be granted in cases of **Impeachment**.
(1987 Constitution, Art. VII, Sec. 19)
5. Cannot be granted for **violations of Election laws** without favorable recommendations of the COMELEC.
Ratio: The COMELEC is an independent body.
6. Cannot restore **Public offices forfeited**.

Kinds of pardon

As to presence of condition:

- a. **Absolute pardon**– One extended without any conditions; totally extinguishes criminal liability (See: RPC, Art. 89[4]).



- b. **Conditional pardon** – One under which the convict is required to comply with certain requirements.

Q: Mateo was convicted of Homicide but was later on granted conditional pardon by the president. When Mateo was filling up his personal data sheet for employment in public office, he did not disclose the existence of a prior criminal conviction for homicide. Can Mateo be employed as a public employee?

A: NO. The pardon granted to Mateo is one of Conditional Pardon, the pardon did not expressly remit the accessory penalty of Homicide which is perpetual absolute disqualification from holding public office or employment (*Mateo v. Executive Secretary*, G.R. No. 177875, Aug 8, 2016).

As to effect:

- a. **Plenary pardon**– Extinguishes all the penalties imposed upon the offender, including accessory disabilities
- b. **Partial pardon**– Does not extinguish all the penalties; partially extinguishes criminal liability [See: *RPC*, Art. 94(1)].

NOTE: A judicial pronouncement that a convict who was granted a pardon subject to the condition that he should not again violate any penal law is not necessary before he can be declared to have violated the condition of her pardon (*Torres v. Gonzales*, G.R. No. L-76872, July 23, 1987).

Effects of the grant of pardon

The grant of pardon from the President:

1. Frees the individual from all the penalties and legal disabilities imposed upon him by the sentence, and
NOTE: *RPC*, Article 36. Pardon; its effect: A pardon shall in no case exempt the culprit from the payment of the civil indemnity
2. Restores to him all his civil and political rights.
NOTE: *RPC*, Article 36. Pardon; its effect: A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

Options of the convict when granted pardon

1. **Conditional Pardon**– The offender has the right to reject it since he may feel that the condition imposed is more onerous than the penalty sought to be remitted.
2. **Absolute Pardon**– The pardonee has no option at all and must accept it whether he likes it or not.

NOTE: In this sense, an absolute pardon is similar to commutation, which is also not subject to acceptance by the offender.

Pardon does not *ipso facto* restore former office and his rights and privileges

Pardon does not *ipso facto* restore a convicted felon neither to his former public office nor to his rights and privileges, which were necessarily relinquished or forfeited by reason of the conviction although such pardon undoubtedly restores his eligibility to that office (*Monsanto v. Factoran*, G.R. No. 78239, February 9, 1989).

Q: Former President Estrada was convicted of the crime of plunder by the Sandiganbayan. He was granted an executive clemency by Former President Macapagal-Arroyo. In 2013, he ran for the position of Mayor of Manila, and won the election.

Atty Risos-Vidal, and, former Mayor of Manila, Alfredo Lim question the eligibility of Estrada to hold an elective post. They contend that the pardon granted by Pres. Arroyo to the latter was a conditional pardon as it did not expressly provide for the remission of the penalty of perpetual absolute disqualification especially the restoration of the right to vote and be voted for public office, as required by Articles 36 and 41 of the Revised Penal Code.

They further contend that the third preambular clause in the pardon, which states that Estrada had publicly committed to no longer seek any elective position or office, disqualifies him from the post of Mayor. Is the contention of the petitioners tenable?

A: NO. Former President Estrada, who was convicted for the crime of plunder by the Sandiganbayan, was granted an **absolute pardon** that fully restored all his civil and political rights, which naturally includes the right to seek public elective office. The wording of the pardon extended to him is *complete, unambiguous and unqualified*. He is therefore eligible for the post of Mayor of Manila.

The pardoning power of the President **cannot be limited by legislative action**. It is a *presidential prerogative*, which may not be interfered with by Congress or the Court, except when it exceeds the limits provided by the Constitution. Articles 36 and 41 of the *RPC* should thus be construed in a way that will **give full effect to the executive clemency instead of indulging in an overly strict interpretation** that may serve to impair or diminish the import of the pardon which emanated from the



Office of the President, and duly signed by the Chief Executive herself.

The third preambular clause is not an integral part of the decree of the pardon and therefore, does not by itself operate to make the pardon conditional or to make its effectivity contingent upon the fulfillment of the commitment nor to limit the scope of the pardon.

Thus, Atty. Risos-Vidal and former Manila Mayor Lim's contentions that the said pardon granted was a conditional pardon as it did not expressly provide for the remission of the penalty of perpetual absolute disqualification especially the restoration of the right to vote and be voted for public office, as required by the RPC and that the third preambular clause in the pardon, which states that Estrada had publicly committed to no longer seek any elective position or office, disqualifies him from the post of Mayor are untenable (*Risos-Vidal v. Estrada*, G.R. No. 206666, January 21, 2015).

FORMS OF EXECUTIVE CLEMENCY

1. Reprieve
2. Commutations
3. Remission of fines and forfeitures
4. Probation
5. Parole
6. Amnesty

Reprieve

The postponement of sentence to a date certain, or stay of execution.

NOTE: It may be ordered to enable the government to secure additional evidence to ascertain the guilt of the convict or, in the case of the execution of the death sentence upon a pregnant woman, to prevent the killing of her unborn child.

Commutation

The reduction or mitigation of the penalty, from death penalty to life imprisonment, remittances and fines. Commutation is a pardon in form but not in substance, because it does not affect his guilt; it merely reduces the penalty for reasons of public interest rather than for the sole benefit of the offender.

NOTE: Commutation does not have to be in any particular form. Thus, the fact that a convict was released after 6 years and placed under house arrest, which is not a penalty, already leads to the conclusion that the penalty has been shortened.

Judicial power to pass upon the validity of the actions of the President in granting executive clemency

The SC is not deciding a political question in reviewing the correctness of the action of the President in granting executive clemency by commuting the penalty of dismissal to a dismissed clerk of court. What it is deciding is whether or not the President has the power to commute the penalty of the said clerk of court. As stated in *Daza v. Singson* (G.R. No. 87721-30, December 21, 1989), it is **within the scope of judicial power to pass upon the validity of the actions of the other departments of the Government.**

Remission of fines and forfeitures

Merely prevents the collection of fines or the confiscation of forfeited property. It cannot have the effect of returning property which has been vested in third parties or money already in the public treasury.

NOTE: The power of the President to remit fines and forfeitures may not be limited by any act of Congress. But a statute may validly authorize other officers, such as department heads or bureau chiefs, to remit administrative fines and forfeitures.

Probation

A disposition under which a defendant after conviction and sentence is released subject to conditions imposed by the court and to the supervision of a probation officer.

NOTE: It is not a right granted to a convicted offender; it is a special privilege granted by the State to a penitent qualified offender, who does not possess the disqualifications under P.D. No. 968, as amended. Likewise, the Probation Law is not a penal law for it to be liberally construed to favor the accused (*Maruhom v. People*, G.R. No. 206513, October 20, 2015).

Probation vs. Pardon

BASIS	PROBATION	PARDON
Nature	Judicial in nature	Executive in nature
When applicable	May be granted after actual service of sentence	Requires conviction by final judgment



Parole

The suspension of the sentence of a convict granted by a Parole Board after serving the minimum term of the indeterminate sentence penalty, without granting a pardon, prescribing the terms upon which the sentence shall be suspended.

Parole vs. Pardon

BASIS	PAROLE	PARDON
Effect	Release of a convict from imprisonment and is not a restoration of his liberty	Release of convict from conviction
Nature	In custody of the law but no longer under confinement	Sentence is condoned, subject to reinstatement in case of violation of the condition that may have been attached to the pardon

Amnesty

The grant of general pardon to a class of political offenders either after conviction or even before the charges is filed. It is the form of executive clemency which under the Constitution may be granted by the President only with the concurrence of the legislature.

Requisites of amnesty

1. Concurrence of a majority of all the members of Congress (1987 Constitution, Art. VII, Sec. 19); and
2. A previous admission of guilt (*Vera v. People*, G.R. No. L-18184, January 31, 1963).

Effects of the grant of amnesty

The total extinguishment of the criminal liability and of the penalty and all its effects. Amnesty reaches back to the past and erases whatever shade of guilt there was. In the eyes of the law, a person granted amnesty is considered a new-born child.

Amnesty vs. Pardon

BASIS	AMNESTY	PARDON
Nature of the offense	Addressed to Political offenses	Addressed to Ordinary offenses
As to whom granted	Granted to a class of persons	Granted to individuals
As to concurrence of Congress	Requires concurrence of majority of all members of Congress	Does not require concurrence of Congress
Nature of the act	Public act which the court may take judicial notice of	Private act which must be pleaded and proved
As to perspective	Looks backward and puts to oblivion the offense itself	Looks forward and relieves the pardonee of the consequence of the offense
When granted	May be granted before or after conviction	Only granted after conviction by final judgment
As to acceptance	Need not be accepted	Must be accepted

NOTE: The right to the benefits of amnesty, once established by the evidence presented either by the complainant or prosecution, or by the defense, **cannot be waived**, because it is of public interest that a person who is regarded by the Amnesty Proclamation which has the *force of a law*, not only as innocent, for he stands in the eyes of the law as if he had never committed any punishable offense (*Barrioquinto v. Fernandez*, G.R. No. L-1278, January 21, 1949).

DIPLOMATIC POWERS (1994, 1996, 2003, 2008, 2015)

Sources of the President's diplomatic powers

1. The Constitution
2. The status of sovereignty and independence

NOTE: By reason of the President's unique position as Head of State, he is the logical choice as the nation's chief architect of or spokesman in foreign relations. The Senate, on the other hand, is granted



the right to share in the treaty-making power of the President by concurring with him with the right to amend.

Scope of the foreign relations powers of the President (N-ARC-DP-Reco)

1. Negotiate treaties and other international agreements. However, such treaty or international agreement requires the concurrence of the Senate, (Art. VII, Sec. 21) which may opt to do the following:
 - a. Approve with 2/3 majority;
 - b. Disapprove outright; or
 - c. Approve conditionally, with suggested amendments which if re-negotiated and the Senate's suggestions are incorporated, the treaty will go into effect without need of further Senate approval.

NOTE: Executive agreements, however, do not require legislative concurrence (*Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011). **(2015 Bar)**

An **executive agreement** is a "treaty" within the meaning of that word in international law and constitutes enforceable domestic law (*Nicolas v. Romulo*, G.R. No. 175888, February 11, 2009).

Requisites of Executive Agreement(under Vienna Convention):

- a) The agreement must be between states;
- b) It must be written; and
- c) It must be governed by international law (*China National Machinery and Equipment Corporation v. Sta. Maria*, G.R. No. 185572, February 7, 2012).

Role of the Senate

The role of the Senate, however, is limited only to giving or withholding its consent, or concurrence, to the ratification. It should be emphasized that under our Constitution, the power to ratify is vested in the President, subject to the concurrence of the Senate.

Hence, it is within the authority of the President to refuse to submit a treaty to the Senate or, having secured its consent for its ratification, refuse to ratify it. Although the refusal of a state to ratify a treaty which has been signed in its behalf is a serious step that should not be taken lightly, such decision is within the competence of the President alone. (*Pimentel v. Exec. Sec.*, G.R. No. 158088, July 6, 2005)

2. Appoint ambassadors, other public ministers, and consuls.
3. Receive ambassadors and other public ministers accredited to the Philippines.
4. Contract and guarantee foreign loans on behalf of RP (1987 Constitution, Art. VII, Sec. 20). **(1994, 1999 Bar)**
5. Deport aliens –
 - a. This power is vested in the President by virtue of his office, subject only to restrictions as may be provided by legislation as regards to the grounds for deportation (*Revised Administrative Code*, Sec. 69).
 - b. In the absence of any legislative restriction to authority, the President may still exercise this power.
 - c. The power to deport aliens is limited by the requirements of due process, which entitles the alien to a full and fair hearing. **NOTE:** Summary deportation shall be observed in cases where the charge against the alien is overstaying or expiration of his passport. (*Board of Commissioners v. Jong Keun Park*, G.R. No. 159835, January 21, 2010)
 - d. An alien has the right to apply for bail provided certain standard for the grant is necessarily met (*Government of Hong Kong v. Olalia*, G.R. No. 153675, April 19, 2007).

NOTE: The adjudication of facts upon which the deportation is predicated devolved on the President whose decision is final and executory (*Tan Tong v. Deportation Board*, G.R. No. L-7680, April 30, 1955).

6. Decide that a diplomatic officer who has become *Persona non grata* be recalled.
7. Recognize governments and withdraw recognition.

Q: The members of the MALAYA LOLAS, a non-stock, non-profit organization, established for the purpose of providing aid to the victims of rape by Japanese military forces in the Philippines during the Second World War, claim that since 1998, they have approached the Executive Department through the DOJ, DFA, and OSG, requesting assistance in filing a claim against the Japanese officials and military officers who ordered the establishment of the comfort women stations in the Philippines. However, officials of the Executive Department declined to assist the petitioners and took the position that the individual claims of the comfort women for compensation had already been fully satisfied by Japans compliance with the Peace Treaty



between the Philippines and Japan. Hence, they file a *Petition for Certiorari* under Rule 65 of the Rules of Court with an application for the issuance of a writ of preliminary mandatory injunction. Will the action prosper?

A: NO. The Constitution has entrusted to the Executive Department the conduct of foreign relations for the Philippines. Whether or not to espouse petitioners' claim against the Government of Japan is left to the exclusive determination and judgment of the Executive Department. The Court cannot interfere with or question the wisdom of the conduct of foreign relations by the Executive Department. Accordingly, the court cannot direct the Executive Department, either by writ of certiorari or injunction, to conduct our foreign relations with Japan in a certain manner (*Vinuya v. Executive Secretary*, G.R. No. 162230, April 28, 2010).

POWERS RELATIVE TO APPROPRIATION MEASURES

1. The President recommends the appropriation for the operation of the Government as specified in the budget [1987 Constitution, Art. VI, Sec. 25(1)].
2. The President, may, by law, be authorized to augment any item in the general appropriations law for his respective office from savings in other items of his respective appropriations [1987 Constitution, Art. VI, Sec. 25(5); *Demetria v. Alba*, G.R. No. 71977, February 27, 1987 and *Araullo v. Aquino III*, G.R. No. 209287, July 1, 2014].
3. The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object. [1987 Constitution, Art. VI, Sec. 27(2)]
4. Power to execute or implement GAA through a program of expenditures to be approved by the President. (*TESDA v. COA*, G.R. No. 196418, February 10, 2015)

Validity of transferring savings between departments

(Please see earlier discussion on Requisites for the valid transfer of appropriated funds under Sec. 25(5), Art. VI of the 1987 Constitution under the Legislative Department)

DELEGATED POWERS

(Please see earlier discussion on Delegation of Powers under General Considerations)

VETO POWERS

(Please see earlier discussion on Presidential Veto and Congressional Override under the Legislative Department)

RESIDUAL POWER

The powers of the President cannot be said to be limited only to the specific power enumerated in the Constitution. Executive power is more than the sum of specific powers so enumerated. The framers did not intend that by enumerating the powers of the President he shall exercise those powers and no other. Whatever power inherent in the government that is neither legislative nor judicial has to be executive. These unstated *residual powers* are implied from the grant of executive power and which are necessary for the President to comply with his duties under the Constitution (*Marcos v. Manglapus*, G.R. No. 88211, Oct. 27, 1989).

EXECUTIVE PRIVILEGE

(Please see earlier discussion on Presidential Privilege under the Legislative Department)

EMERGENCY POWERS

Congressional grant of emergency powers to the President (2010 Bar)

Under Art. VI, Sec. 23(2), Congress may grant the President emergency powers subject to the following conditions: **(WaLiReN)**

1. There is a **War** or other national emergency;
2. The grant of emergency powers must be for a **Limited** period;
3. The grant of emergency powers is subject to such **Restrictions** as Congress may prescribe; and
4. The emergency powers must be exercised to carry out a **National** policy declared by Congress.

Rationale: Problems in times of emergency must be solved within the shortest possible time to prevent them from aggravating the difficulties of the nation.

NOTE: Emergency powers are self-liquidating unless sooner withdrawn. They will automatically cease upon the end of the emergency that justified their delegation.

Examples of other national emergencies:

- a) Rebellion
- b) Economic crisis
- c) Pestilence or epidemic
- d) Typhoon
- e) Flood



f) Other similar catastrophe of nation-wide proportions
(Cruz, Philippine Political Law, p. 163)

RULES ON SUCCESSION

Rules to be applied if there is vacancy before the beginning of the term of the President. (1987 Consitution, Art. VII, Sec 7)

CAUSE OF VACANCY	CONSEQUENCE
In case of death or permanent disability of the President-elect.	The Vice-President elect shall become President.
In case of failure to elect the President (i.e. Presidential elections have not been held or non-completion of the canvass of the Presidential elections)	The Vice-President shall act as the President until the President shall have been chosen and qualified.
In case no President and Vice-President shall have been chosen and qualified , or where both shall have died or become permanently disabled .	The Senate President , or in case of his inability, the Speaker of the HoR shall act as President until a President or a Vice-President shall have been chosen and qualified. Congress shall by law provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability or inability of the officials.

Limitation on the power of the Acting President

Appointments extended by an Acting President shall remain effective, unless revoked by the elected President, within 90 days from his assumption or reassumption of office (1987 Constitution, Art. VII, Sec. 14).

Rules to be applied if the vacancy occurs during the incumbency of the President

CAUSE OF VACANCY	CONSEQUENCE
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In case of : (DPR₂) b. Death ; c. Permanent Disability ; d. Removal from office ; or e. Resignation of the President	The Vice President shall become the President to <i>serve the unexpired term</i> .
In case of : a. Death ; b. Permanent Disability ; c. Removal from office ; or d. Resignation of both the President and the Vice-President	The Senate President , or in case of his <i>inability</i> , the Speaker of the HoR , shall act as President <i>until the President or Vice President shall have been elected and qualified</i> .

Rules and procedure to be followed if a vacancy occurs in the offices of the President and Vice-President. (1987 Consitution, Art. VII, Sec. 10)

1. At 10:00 A.M. of the third day after said vacancy occurs – Congress shall convene in accordance with its rules without need of call.
2. Within 7 days — Congress shall enact a law calling for a special election to elect a President and a Vice President.
3. Said special election shall be held — Not earlier than forty-five (45) days nor later than sixty (60) days from the time of such call.
4. The bill calling such special election — Shall be deemed certified under Sec. 26, par. 2, Art. VI of the Constitution and shall become law upon its approval on third reading by Congress.
5. Appropriations for said special election — Shall be charged against any current appropriations and shall be exempt from the requirements of, Sec. 25, par. 4, Art. VI of the Constitution.
6. The convening of Congress and the special election — cannot be suspended or postponed
7. No special election shall be called — If the vacancy occurs within eighteen (18) months before the date of the next presidential elections.

Instances when there is presidential inability to discharge powers and duties of his office(1987 Constitution, Art. VII, Sec. 11)

INSTANCE	CONSEQUENCE
When the President transmits to the <i>Senate President</i> and to the <i>Speaker of the HoR</i> his written declaration that he is unable to discharge the powers and duties of his office.	The powers and duties of his office shall be discharged by the Vice-President as <i>Acting President</i> .

When a majority of all the members of the Cabinet transmit to the <i>Senate President</i> and to the <i>Speaker of the HoR</i> their written declaration that the President is unable to discharge the powers and duties of his office .	The Vice-President shall immediately assume the powers and duties of the office as <i>Acting President</i> .
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NOTE: The President can **reassume** power and duties of his office once he transmits to the Senate President and to the Speaker of the HoR his *written declaration that no inability exists*.



JUDICIAL DEPARTMENT

JUDICIAL POWER (1992, 1994, 1995, 1996, 1997, 2000, 2004, 2006, 2012 Bar)

The duty of the courts of justice to settle actual controversies involving rights, which are legally demandable and enforceable *and* to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government [1987 Constitution, Art. VIII, Sec. 1(2)].

Body vested with judicial power

It is vested in one **Supreme Court** and such **lower courts as may be established by law** (1987 Constitution, Art. VIII, Sec. 1).

Judicial inquiry

The power of the court to inquire into the exercise of discretionary powers to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction.

Q: Paragraph 2 of Sec. 14 of the Ombudsman Act (R.A. 6770) provides: *"No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law."* Decide on the constitutionality of this provision.

A: Since the Par. 2 of Sec. 14 of R.A. 6770 limits the remedy against "decision or findings" of the Ombudsman to a Rule 45 appeal and thus – similar to the Par. 4 of Sec. 27 of RA 6770 – attempts to effectively increase the Supreme Court's appellate jurisdiction without its advice and concurrence, therefore, the former provision is also **unconstitutional** and **invalid** (*Carpio-Morales v. Court of Appeals*, G.R. No. 217126-27, November 10, 2015).

JUDICIAL REVIEW (2015 Bar)

The power of the SC to determine the constitutionality of a law, treaty, ordinance, presidential issuance, and other governmental acts.

NOTE: When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine

conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed as '**Judicial Supremacy**', which properly is the power of judicial review under the Constitution (*Angara v. The Electoral Commission*, G.R. No. L-45081, July 15, 1936).

Requisites of judicial review (APEN)

1. **Actual case or Controversy**– It involves a conflict of legal rights, assertion of opposite legal claims susceptible of legal resolution. It must be both ripe for resolution and susceptible of judicial determination, and that which is not conjectural or anticipatory, or that which seeks to resolve hypothetical or feigned constitutional problems.

NOTE: But even with the presence of an actual case or controversy, the Court may refuse judicial review unless a party who possesses *locus standior* "a right of appearance in a court of justice on a given question" to brings the constitutional question or the assailed illegal movement or act before it.

Q: Angelo Raphael petitions the SC to nullify House Bill No. 4738 which abolishes the Judicial Development Fund (JDF) and replaces it with the Judiciary Support Fund (JSF). The funds from JSF shall be remitted to the national treasury and Congress shall determine how the funds will be used; unlike the JDF, the spending of which is exclusively determined by the SC. Rolly argues that House Bill No. 4738 infringes SC's fiscal autonomy. Is the petition meritorious?

A: NO. There is no actual case or controversy. The Court cannot speculate on the constitutionality or unconstitutionality of a bill that Congress may or may not pass. It cannot rule on mere speculations or issues that are not ripe for judicial determination. Filing of bills is within the legislative power of Congress and is "not subject to judicial restraint" (*In the Matter of Save the Supreme Court v. Abolition of JDF*, UDK-15143, Jan. 21, 2015).

2. **Proper party**– One who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of (*People v. Vera*, G.R. No. 45685 November 16, 1937).

To have standing, one must show that:

1. He has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government;



2. The injury is fairly traceable to the challenged action; and
3. The injury is likely to be redressed by a favorable action (*Francisco, Jr. & Hizon v. Toll Regulatory Board*, G.R. Nos. 166910, October 19, 2010).

Locus Standi vs. Real party-in-interest

LOCUS STANDI	REAL PARTY-IN-INTEREST
Character of the plaintiff	
One who has sustained or is in imminent danger of sustaining an injury as a result of the act complained of (Direct injury test) (<i>Ex parte Levitt</i> , 302 U.S. 633, 1937).	The party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.
Legal nature	
Has constitutional underpinnings	A concept of civil procedure
As to the issue involved	
Whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."	Whether he is "the party who would be benefited or injured by the judgment, or the 'party entitled to the avails of the suit'" (<i>Francisco, et al., v. House of Representatives</i> , G.R. No. 160261, Nov. 10, 2003).

Legal personality

GR: If there is no actual or potential injury, complainant has no legal personality to raise constitutional questions.

XPN: If the question is of transcendental importance.

NOTE: Principle of Transcendental Importance is determined by: (CDO)

1. The Character of the funds or other assets involved in the case;
2. The presence of a clear case of Disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government;
3. The lack of any Other party with a more direct and specific interest in raising the questions being raised (*Francisco, et al., v. House of Representatives, ibid.*).

Rule on standing is a matter of procedure, hence, can be relaxed

When the proceeding involves the assertion of a **public right**, the mere fact that the petitioner is a citizen satisfies the requirement of personal interest. Thus, the privatization of power plants in a manner that ensures the reliability and affordability of electricity in our country is an issue of paramount public interest in which the Court held that petitioner possesses the requisite legal standing to file the case (*Osmeña v. Power Sector Assets and Liabilities Management Corporation*, G.R. No. 212686, September 28, 2015).

When the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws (*The Prov. of North Cotabato v. Gov't of the Rep. of the Phil. Peace Panel on Ancestral Domain*, G.R. No. 183591, October 14, 2008).

Locus Standi in cases involving Taxes

A taxpayer need not be a party to the contract to challenge its validity. As long as taxes are involved, people have a right to question contracts entered into by the government. Further, the issues raised in the petition do not refer to the wisdom but to the legality of the acts complained of. Thus, we find the instant controversy within the ambit of judicial review. Besides, even if the issues were political in nature, it would still come within our powers of review under the expanded jurisdiction conferred upon us by Section 1, Article VIII of the Constitution, which includes the authority to determine whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the government (*Mamba v. Lara*, G.R. No. 165109, December 14, 2009).

Locus Standi in Environmental Cases

In our jurisdiction, *locus standi* in environmental cases has been given a more liberalized approach. Recently, the Court passed the landmark **Rules of Procedure for Environmental Cases**, which allow for a "**citizen suit**," and permit any Filipino citizen, as steward of nature, to file an action before our



courts for violations of our environmental laws. Thus, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules and it is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species (*Resident Marine Mammals v. Reyes*, G.R. No. 180771, April 21, 2015).

The filing of a petition for the issuance of a writ of *kalikasan* does **not** require that a petitioner be directly affected by an environmental disaster. The rule clearly allows juridical persons to file the petition on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation (*West Tower v. First Philippine*, G.R. No. 194239, June 16, 2015).

3. **Earliest opportunity**– Constitutional question must be raised at the earliest possible opportunity.

GR: It must be raised in the pleadings.

XPN:

1. *Criminal case* – It may be brought at *any* stage of the proceedings according to the discretion of the judge (trial or appeal) because no one shall be brought within the terms of the law who are not clearly within them and the act shall not be punished when the law does not clearly punish them.
2. *Civil case* – It may be brought *anytime* if the resolution of the constitutional issue is inevitable in resolving the main issue.
3. When the jurisdiction of the lower court is in question **except** when there is *estoppel*. (*Tijam v. Sibonghanoy*, G.R. No. L-21450, April 15, 1968)

NOTE: The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, if not raised in the pleadings, it cannot be considered in trial and, if not considered in trial, it cannot be considered on appeal.

The **Ombudsman** has no jurisdiction to entertain questions regarding constitutionality of laws. Thus, when the issue of constitutionality of a law was raised before the Court of Appeals, which is the competent court, the constitutional question was raised at the earliest opportune time. (*Estarija v. Ranada*, G.R. No. 159314, June 26, 2006)

4. **Necessity of deciding constitutional questions** – As long as there are other bases which courts can use for decision,

constitutionality of the law will not be touched, thus, courts should refrain from resolving any constitutional issue "*unless* the constitutional question is the *lis mota* of the case."

Lis mota literally means "the cause of the suit or action." Given the presumed validity of an executive act, the petitioner who claims otherwise has the burden of showing first that the case cannot be resolved unless the constitutional question he raised is determined by the Court. (*General v. Urro*, G.R. No. 191560, March 29, 2011)

Scope of Judicial Review

The courts have the power to pass upon the validity and the constitutionality of laws enacted by the legislature, and other bodies of the government, under the *doctrine of checks and balances*.

The lower courts are likewise vested with the power of judicial review, subject however to the appellate jurisdiction of the higher courts.

Constitutional Challenges

When a law is passed, the court awaits an *actual case* that clearly raises adversarial positions in their proper context before considering a prayer to declare it as unconstitutional (*Sameer Overseas v. Cabiles*, G.R. No. 170139, August 5, 2014).

However, in a case where the law passed incorporates the exact clause already declared as unconstitutional, without any perceived substantial change in the circumstances, the Court ruled that there is a *necessity to decide the constitutional issue* involved (*Sameer Overseas v. Cabiles*, *ibid.*).

Thus, when a law or a provision of law is null because it is inconsistent with the Constitution, the nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision. A law or provision of law that was already declared unconstitutional remains as such unless circumstances have so changed as to warrant a reverse conclusion (*Sameer Overseas v. Cabiles*, *ibid.*). **(2014 Bar)**

The constitutionality of an official act may be the *subject of judicial review*, provided the matter is **not** raised collaterally (*Laude v. Hon. Ginez*, G.R. No. 217456, November 24, 2015).

Requisites before a law can be declared partially unconstitutional

1. The legislature must be willing to retain valid portion (**separability clause**); and
2. The valid portion can stand independently as law.

Principle of *Stare Decisis*

Deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority (*De Castro v. JBC, G.R. No. 191002, April 20, 2010*).

NOTE: The Court, as the highest court of the land, may be guided but is **not** controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification (*De Castro v. JBC, ibid.*).

Functions of judicial review

1. *Checking* – Invalidating a law or executive act that is found to be contrary to the Constitution.
2. *Legitimizing* – Upholding the validity of the law that results from a mere dismissal of a case challenging the validity of the law.
3. *Symbolic* – To educate the bench and bar as to the controlling principles and concepts on matters of grave public importance for the guidance of, and restraint upon the future (*Dumlao v. COMELEC, G.R. No. L-52245, January 22, 1980*).

Power of judicial review in impeachment proceedings includes the power of review over justiciable issues in impeachment proceedings (*Francisco v. HoR, G.R. No. 160261, November 10, 2003*).

Judicial review of the SC on findings of facts of administrative tribunals and trial courts

GR: The SC will not disturb the findings of facts of administrative tribunals and the trial courts.

XPN: The SC may review findings of facts of the lower courts under the following exceptions: (**SM-GF-CBA-TW-NE**)

1. When the conclusion is a finding grounded entirely on Speculation, surmises and conjectures;
2. When the inference made is manifestly Mistaken, absurd or impossible;
3. Where there is a Grave abuse of discretion;
4. When the judgment is based on a misapprehension of Facts;
5. When the findings of fact are Conflicting;
6. When the Court of Appeals, in making its findings, went Beyond the issues of the case

and the same is contrary to the Admissions of both appellant and appellee;

7. When the findings are contrary to those of the Trial court;
8. When the findings of fact are Without citation of specific evidence on which the conclusions are based;
9. When the facts set forth in the petition as well as in the petitioner's main and reply briefs are Not disputed by the respondents; and
10. When the findings of fact of the Court of Appeals are premised on the supposed absence of Evidence and contradicted by the evidence on record (*David v. Misamis Occidental II, G.R. No. 194785, July 11, 2012*).

OPERATIVE FACT DOCTRINE (2010 Bar)

Under this doctrine, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. It is a rule of equity (*League of Cities v. COMELEC, G.R. No. 176951, November 18, 2008*).

In another case, the Court held that to return the amounts received to the respective taxing authorities would certainly impose a heavy, and possibly crippling, financial burden upon them who merely, and presumably in good faith, complied with the legislative fiat subject of this case; hence the doctrine of operative fact shall be applied (*Film Development Council v. Colon Heritage Realty, G.R. No. 203754, June 16, 2015*).

NOTE: The invocation of this doctrine is an admission that the law is unconstitutional. Further, as an exception to the general rule, the doctrine only applies as a matter of equity and fair play.

Applicability on executive acts

The Operative Fact Doctrine also applies to executive acts subsequently declared as invalid. A decision made by the president or the administrative agencies has to be complied with because it has the force and effect of law. The term "executive act" is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question of nullified by the Court (*Hacienda Luisita v. Presidential Agrarian Reform Council, G.R. No. 171101, November 22, 2011*).

Doctrine of Relative Constitutionality

A statute valid at one time may become void at another time because of altered circumstances. The constitutionality of a statute cannot, in every



instance, be determined by a mere comparison of its provisions with applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another.

Thus, if a statute in its practical operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of changed conditions (*Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004).

MOOT QUESTIONS

Questions on which a judgment cannot have any practical legal effect or, in the nature of things, cannot be enforced (*Baldo, Jr. v. COMELEC*, G.R. No. 176135, June 16, 2009).

Moot and academic

It is moot and academic when it ceases to present a justiciable controversy by virtue of supervening events so that a declaration thereon would be of no practical use or value.

Court actions over moot and academic cases

GR: The courts should decline jurisdiction over such cases or dismiss it on ground of mootness.

XPns: (GPFR)

1. There is a **G**rave violation of the Constitution.
2. There is an exceptional character of the situation and the **P**aramount public interest is involved.
3. When the constitutional issue raised requires **F**ormulation of controlling principles to guide the bench, the bar, and the public.
4. The case is capable of **R**epetition yet evading review (*David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006; *Republic v. Principalia Management*, G.R. No. 198426, September 2, 2015).

NOTE: Judicial power presupposes actual controversies, the very antithesis of mootness. In the absence of actual justiciable controversies or disputes, the Court generally opts to refrain from deciding moot issues. Where there is no more live subject of controversy, the Court ceases to have a reason to render any ruling or make any pronouncement (*Suplico v. NEDA*, G.R. No. 178830, July 14, 2008).

POLITICAL QUESTIONS

Those questions which, under the Constitution, are to be decided by the people in their sovereign

capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government (*Tañada v. Cuenco*, G.R. No. L-10520, February 28, 1957).

Political Question Doctrine

The doctrine that the power of judicial review cannot be exercised when the issue is a political question. It constitutes another limitation on such power of the judiciary (*Tañada v. Cuenco*, *ibid.*).

Justiciable questions vs. Political questions

BASIS	JUSTICIABLE QUESTIONS	POLITICAL QUESTIONS
<i>Definition</i>	Imply a given right legally demandable and enforceable, an act or omission violative of such right, and a remedy granted and sanctioned by law for said breach of right.	Questions which involve the policy or the wisdom of the law or act, or the morality or efficacy of the same. Generally it cannot be inquired by the courts. Further, these are questions which under the Constitution: <ol style="list-style-type: none"> a. are decided by the people in their sovereign capacity; and b. where full discretionary authority has been delegated by the Constitution either to the executive or legislative department.

Effect of the expanded definition of judicial power on the political question doctrine (1995, 1997, 2004 Bar)

The 1987 Constitution expands the concept of judicial review. Under the expanded definition, the Court cannot agree that the issue involved is a political question beyond the jurisdiction of the court to review. When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected is justiciable—the problem being one of legality or validity, not its wisdom. Moreover, the jurisdiction to delimit constitutional boundaries has been given to the SC. When political questions are involved, the Constitution limits the delimitation as

to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.

SAFEGUARDS OF JUDICIAL INDEPENDENCE

Constitutional safeguards that guarantee the independence of the judiciary

1. The SC is a constitutional body and may not be abolished by the legislature.
2. Members are only removable by impeachment. (1987 Constitution, Art. XI, Sec. 2)
3. The SC may not be deprived of its minimum original and appellate jurisdiction (1987 Constitution, Art. VIII, Sec. 2); appellate jurisdiction may not be increased without its advice or concurrence (1987 Constitution, Art. VI, Sec. 30).

NOTE: The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts (all courts below the SC) but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 (express powers of the SC) hereof. (1987 Constitution, Art. VII, Sec. 2)

4. The SC has administrative supervision over all inferior courts and personnel (1987 Constitution, Art. VIII, Sec. 6).
5. The SC has exclusive power to discipline judges/justices of inferior courts (1987 Constitution, Art. VIII, Sec. 11).
6. The members of the judiciary enjoy security of tenure [1987 Constitution, Art. VIII, Sec. 2 (2)].
7. The members of the judiciary may not be designated to any agency performing quasi-judicial or administrative functions (1987 Constitution, Art. VIII, Sec. 12).
8. The salaries of judges may not be reduced; the judiciary enjoys fiscal autonomy (1987 Constitution, Art. VIII, Sec. 3).
9. The SC alone may initiate the promulgation of the Rules of Court [1987 Constitution, Art. VIII, Sec. 5 (5)].
10. The SC alone may order temporary detail of judges. [1987 Constitution, Art. VIII, Sec. 5 (3)]
11. The SC can appoint all officials and employees of the Judiciary (1987 Constitution, Art. VIII, Sec. 5 (6)).

Constitutional guarantee of fiscal autonomy (1999, 2000 Bar)

In *Bengzon v. Drilon* (G.R. No. 103524, April 15, 1992), the SC explained that fiscal autonomy contemplates a guarantee of full flexibility to allocate and utilize resources with the wisdom and dispatch that the needs require.

It recognizes the power and authority to deny, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by it in the course of the discharge of its functions.

Q: The Court received two letters requesting for copies of Statement of Assets, Liabilities, and Net worth (SALN) and the Personal Data Sheet (PDS) or the Curriculum Vitae (CV) of its justices for the year 2008 for the purposes of updating their database of information on government officials. Other requests for copies of SALN and other personal documents of the Justices of the Court, Court of Appeals (CA), and Sandiganbayan (SB) were filed. Can the Court allow the release of copies of SALN and other personal documents of the incumbent Justices?

A: The Court may deny request for certified copies of Statements of Assets, Liabilities and Net Worth (SALNs) of all incumbent justices of the SC and Court of Tax Appeals if it is lacking of sufficient basis. It should not be forgotten that invoking one's constitutional right to information must not set aside the need to preserve the integrity and independence of the judiciary. It must be invoked if under the circumstances it would not result in endangering, diminishing or destroying the independence and security of the members of the judiciary in the performance of their judicial functions or expose them to revenge for adverse decisions. (RE: Request for Copies of the SALN and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary, A.M. No. 09-8-6-SC, June 13, 2012)

Judicial Privilege (Deliberative Process Privilege or DPP)

The privilege against disclosure of information or communications that formed the process of judicial decisions.

This applies to **confidential matters**, which refer to information not yet publicized by the Court like (1) raffle of cases, (2) actions taken in each case in the Court's agenda, and (3) deliberations of the Members in court sessions on case matters pending before it.



This privilege, however, is *not exclusive* to the Judiciary and it extends to the other branches of government due to our adherence to the *principle of separation of powers* (In *Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses under the Subpoenas of Feb. 10, 2012 and the Various Letters of Impeachment Prosecution Panel dated January 19 and 25, 2012, February 14, 2012*).

Purpose of Judicial Privilege

To prevent the '*chilling*' of deliberative communications. It insulates the Judiciary from an improper intrusion into the functions of the judicial branch and shields judges, justices, and court officials and employees from public scrutiny or the pressure of public opinion that would impair their ability to render impartial decisions. (*Ibid.*)

Q: Does the participation of Associate Justices in the hearings of the House Committee on Justice determining probable cause for the impeachment of an impeachable officer make them disqualified to hear a petition for *quo warranto* against said officer?

A: NO. Their appearance thereat is in deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against an impeachable officer could not be doubted. The same is not a ground for inhibition provided that their appearance is with the prior consent of the Supreme Court En Banc and they faithfully observe the parameters that the Court set for the purpose.

Requisites for a document to be protected by DPP

It must be shown that the document is both:

1. *Pre-decisional* – If they were made in the attempt to reach a final decision; and
2. *Deliberative* – If it reflects the give-and-take of the consultative process such as the disclosure of the information would discourage open discussion within the agency.

NOTE: Court records which are pre-decisional and deliberative in nature are thus protected and cannot be the subject of subpoena if judicial privilege is to be preserved. (*Ibid.*)

NOTE: In a case where the House Impeachment Panel, through letters, asked for the examination of records and the issuance of certified true copies of the *rollos* and the Agenda and Minutes of Deliberations of specific SC-decided cases and at the

same time, requested for the attendance of court officials including judges, justices, and employees as witnesses under subpoenas, it was held that Members of the Court may not be compelled to testify in the impeachment proceedings against the Chief Justice or other Members of the Court about information acquired in the performance of their official adjudicatory functions and duties; otherwise, their disclosure of confidential matters learned in their official capacity violates judicial privilege as it pertains to the exercise of the constitutional mandate of adjudication. (*Ibid.*)

XPN: If the intent only is for them to identify or certify the genuineness of documents within their control that are not confidential and privileged, their presence in the Impeachment Court may be permitted.

Waiver of privilege

This privilege, incidentally, belongs to the Judiciary and is for the SC (as the representative and entity speaking for the Judiciary), and not for the individual justice, judge, or court official or employees to waive. Thus, every proposed waiver must be referred to the SC for its consideration and approval.

JUDICIAL RESTRAINT

Principle of Judicial Restraint

Theory of judicial interpretation that encourages judges to limit the exercise of their own power.

In terms of legislative acts, it means that every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality (*Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001).

APPOINTMENTS TO THE JUDICIARY

Judicial appointment (2000 Bar)

The members of the judiciary are appointed by the President of the Philippines from among a list of at least three (3) nominees prepared by the Judicial and Bar Council (JBC) for every vacancy.

NOTE: The appointment shall need no confirmation from the Commission on Appointments. (1987 Constitution, Art. VIII, Sec. 9)

Rules on vacancies in the SC



1. Vacancies in the **SC** should be filled within 90 days from the occurrence of the vacancy. (1987 Constitution, Art. VIII, Sec. 4(1))
2. Vacancies in **lower courts** should be filled within 90 days from submission to the President of the JBC list.
3. The filling of the vacancy in the Supreme Court within the 90-day period is an *exception* to the prohibition on midnight appointments of the president. This means that even if the period falls on the period where the president is prohibited from making appointments (midnight appointments); the president is allowed to make appointments to fill vacancies in the Supreme Court.

Otherwise stated, the prohibition of the President to make appointments two (2) months prior the immediate presidential election is limited to appointments to the lower courts (*De Castro v. JBC, G.R. No. 191002, March 17, 2010*).

Composition of the JBC (C²RISP²) (1999 Bar)

1. Chief Justice, as *ex-officio* chairman
2. Secretary of Justice, as an *ex-officio* member
3. Representative of Congress, as an *ex-officio* member
4. Representative of the Integrated Bar
5. A Professor of law
6. A Retired member of the SC
7. Private sector representative

NOTE: JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. However, since the formulation of guidelines and criteria is necessary and incidental to the exercise of the JBC's constitutional mandate, a determination must be made on whether the JBC has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing the said policy (*Villanueva v. JBC, G.R. No. 211833, April 7, 2015*).

Staggered Terms of members of the JBC

- A. *Regular Members*
 1. Chief Justice – 4 years
 2. Secretary of Justice – 4 years
 3. Representative of Congress – 4 years
- B. *Other Members*
 4. Representative of the Integrated Bar – 4 years
 5. A professor of law – 3 years
 6. A retired member of the SC – 2 years
 7. Private sector representative – 1 year [1987 Constitution, Art. VIII, Sec. 8(2)].

Rationale: continuity and preservation of the institutional memory

Representative of Congress in the JBC

Only one. The word “Congress” used in Sec. 8(1), Art. VIII is used in its generic sense. Only a singular representative may be allowed to sit in the JBC from either the Senate or HoR. The seven-member composition of the JBC serves a practical purpose, that is, to provide a solution should there be a stalemate in voting.

It is evident that the definition of “Congress” as a bicameral body refers to its primary function in government – to legislate. In the passage of laws, the Constitution is explicit in the distinction of the role of each house in the process. The same holds true in Congress’ non-legislative powers. An inter-play between the two houses is necessary in the realization of these powers causing a vivid dichotomy that the Court cannot simply discount. This, however, cannot be said in the case of JBC representation because no liaison between the two houses exists in the workings of the JBC. Hence, the term “Congress” must be taken to mean the entire legislative department. The Constitution mandates that the JBC be composed of seven (7) members only (*Chavez v. JBC, G.R. No. 202242, July 17, 2012*).

Functions of the JBC (2000 Bar)

The principal function of the JBC is to recommend appointees to the judiciary. It may, however, exercise such functions as the SC may assign to it (1987 Constitution, Art. VIII, Sec. 8).

NOTE: The duty of the JBC to submit a list of nominees before the start of the President's mandatory 90-day period to appoint is **ministerial**, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC (*De Castro v. JBC, G.R. No. 191002, March 17, 2010*).

Unanimity rule on integrity

Under Sec. 2, Rule 10 of JBC-009, an applicant must obtain the unanimous vote of the JBC members in order to be included in the shortlist of nominees to be submitted to the President whenever a question of integrity is raised against him.

Tenure of the members of the SC and judges (1993, 1996, 2000 Bar)

Members of the SC and judges of lower courts can hold office during good behavior until:

1. The age of 70 years old; or



2. They become incapacitated to discharge their duties.

General qualification for appointments to the judiciary

Of proven competence, integrity, probity and independence [1987 Constitution, Art. VIII, Sec. 7(3)].

Qualifications for appointments to the SC

1. Natural born citizen of the Philippines;
2. At least 40 years of age; and
3. A judge of a lower court or engaged in the practice of law in the Philippines for 15 years or more [1987 Constitution, Art. VIII, Sec. 7(1)].

Q: May the Supreme Court assume jurisdiction and give due course to a petition for *quo warranto* against an impeachable officer and against whom an impeachment complaint has already been filed with the House of Representatives?

A: YES. The language of Section 2, Article XI of the Constitution does not foreclose a *quo warranto* action against impeachable officers. The provision reads:

The xxx Members of the Supreme Court, xxx may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. xxx

The provision uses the permissive term "may" which, in statutory construction, denotes discretion and cannot be construed as having a mandatory effect. The term "may" is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise. An option to remove by impeachment admits of an alternative mode of effecting the removal. Therefore, by its tenor, Section 2, Article XI of the Constitution allows the institution of a *quo warranto* action against an impeachable officer.

While both impeachment and *quo warranto* may result in the ouster of the public official, the two proceedings materially differ. Thus, they are not mutually exclusive remedies and may proceed simultaneously. At its most basic, impeachment proceedings are political in nature, while an action for *quo warranto* is judicial or a proceeding traditionally lodged in the courts. Aside from the difference in their origin and nature, *quo warranto* and impeachment may proceed independently of each other as these remedies are distinct as to jurisdiction, grounds, applicable rules pertaining to

initiation, filing and dismissal, and limitations (*Republic v. Sereno*, G.R. No. 237428, May 11, 2018).

General qualifications for appointments to LOWER COLLEGIATE courts

1. Natural born citizen of the Philippines; and
2. Member of the Philippine Bar.

General qualifications for appointments to LOWER courts

1. Citizen of the Philippines; and
2. Member of the Philippine Bar.

NOTE: For both lower collegiate courts and lower courts, Congress may prescribe other qualifications [1987 Constitution, Art. VIII, Sec. 7 (1) and (2)].

Q: By virtue of Republic Act No. 10660, two new divisions of the Sandiganbayan were created with three members each, and there were six simultaneous vacancies for Associate Justice of said collegiate court. The JBC then submitted six separate shortlists for the vacancies for the 16th to the 21st Sandiganbayan Associate Justices. Petitioners assert that President Aquino's power to appoint is limited to each shortlist submitted by the JBC, President Aquino should have appointed the 16th Sandiganbayan Associate Justice from the nominees in the shortlist for the 16th Sandiganbayan Associate Justice, the 17th Sandiganbayan Associate Justice from the nominees in the shortlist for the 17th Sandiganbayan Associate Justice, and so on and so forth. By totally overlooking the nominees for the 16th Sandiganbayan Associate Justice and appointing respondents Musngi and Econg, who were both nominees for the 21st Sandiganbayan Associate Justice, as the 16th and 18th Sandiganbayan Associate Justices, respectively, President Aquino violated the Art. VIII, Sect. 9 of the 1987 Constitution, which requires the President to appoint from a list of at least three nominees submitted by the JBC for every vacancy. Are the petitioners correct?

A: NO. Nomination by the JBC shall be a qualification for appointment to the Judiciary, but this only means that the President cannot appoint an individual who is not nominated by the JBC. It should be stressed that the power to recommend of the JBC cannot be used to restrict or limit the President's power to appoint as the latter's prerogative to choose someone whom he/she considers worth appointing to the vacancy in the Judiciary is still paramount. As long as in the end, the President appoints someone nominated by the JBC, the appointment is valid. This does not violate Article VIII, Section 9 of the 1987 Constitution. To meet the minimum requirement under said

constitutional provision of three nominees per vacancy, there should at least be 18 nominees from the JBC for the six vacancies for Sandiganbayan Associate Justice; but the minimum requirement was even exceeded herein because the JBC submitted for the President's consideration a total of 37 qualified nominees (*Aguinaldo v. Aquino, G.R. No. 224302, November 29, 2016*).

Q: Upon the retirement of Associate Justice Roberto Abad, the Judicial and Bar Council (JBC) announced the opening for application or recommendation for the position. Francis H. Jardeleza (Jardeleza) was nominated for the said position and upon acceptance of the nomination, he was included in the names of candidates. However, Chief Justice Sereno invoked Sect. 2, Rule 10 of JBC-009 against him, and thereafter, the JBC released the short list of four nominees, which did not include Jardeleza. Jardeleza resorted to judicial intervention, alleging the illegality of his exclusion from the short list due to the deprivation of his constitutional right to due process.

- a. Is the right to due process available in JBC proceedings?
- b. Was Jardeleza denied his right to due process?

A:

- a. **YES.** An applicant's access to the rights afforded under the due process clause is not discretionary on the part of the JBC. While the facets of criminal and administrative due process are not strictly applicable to JBC proceedings, their peculiarity is insufficient to justify the conclusion that due process is not demandable. The fact that a proceeding is sui generis and is impressed with discretion does not automatically denigrate an applicant's entitlement to due process. Notwithstanding being "a class of its own," the right to be heard and to explain one's self is availing. The Court subscribed to the view that in cases where an objection to an applicant's qualifications is raised, the observance of due process neither negates nor renders illusory the fulfillment of the duty of JBC to recommend. This holding is not an encroachment on its discretion in the nomination process. Actually, its adherence to the precepts of due process supports and enriches the exercise of its discretion.
- b. **YES.** Even as Jardeleza was verbally informed of the invocation of Section 2, Rule 10 of JBC-009 against him and was later asked to explain himself during the meeting, these circumstances still cannot expunge an immense perplexity that lingers in the mind of the Court. What is to become of the procedure laid down in JBC-010 if the same would be

treated with indifference and disregard? To repeat, as its wording provides, any complaint or opposition against a candidate may be filed with the Secretary within ten (10) days from the publication of the notice and a list of candidates. Surely, this notice is all the more conspicuous to JBC members (*Jardeleza V. Sereno, et al., G.R. No. 213181, 19 August 2014*).

SUPREME COURT

Composition of the SC

- A. Chief Justice
- B. 14 Associate Justices

Divisions of the SC

It may sit *en banc* or in its discretion, in divisions of three, five, or seven members [*1987 Constitution, Art. VIII, Sec. 4(1)*]

EN BANC DECISIONS

Cases that should be heard by the SC *en banc* (TRuP-DE-PreJ) (1996, 1999 Bar)

1. All cases involving the constitutionality of a Treaty, international or executive agreement, or law;
2. All cases which under the **Rules** of Court may be required to be heard *en banc*;
3. All cases involving the constitutionality, application or operation of **Presidential** decrees, proclamations, orders, instructions, ordinances, and other regulations;
4. Cases heard by a **Division** when the required majority in the division is not obtained;
5. Cases where the SC modifies or reverses a doctrine or principle of law **Previously** laid either *en banc* or in division;
6. Administrative cases involving the discipline or dismissal of **Judges** of lower courts;
7. **Election** contests for president or vice-president.

NOTE: Other cases or matters may be heard in division, and decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues and voted thereon, but in no case without the concurrence of at least three such members.

No law shall be passed increasing the appellate jurisdiction of the SC as provided in the Constitution without its advice and concurrence (*1987 Constitution, Art. VI, Sec. 30*).

Appellate jurisdiction of the SC (1994, 1995, 1996, 2000, 2004, 2006 Bar)



The Supreme Court has the power to review, revise, reverse, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

1. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
2. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
3. All cases in which the jurisdiction of any lower court is in issue.
4. All criminal cases in which the penalty imposed is reclusion perpetua or higher.
5. All cases in which only an error or question of law is involved [1987 Constitution, Art VIII, Sec. 5(2)].

PROCEDURAL RULE-MAKING POWER

Scope of the rule-making power of the SC (1991, 2000, 2008, 2009, 2013, 2014, 2015 Bar)

1. The protection and enforcement of constitutional rights
2. Pleadings, practice and procedure in all courts
3. Admission to the practice of law
4. The Integrated Bar
5. Legal assistance to the underprivileged

Limitations on its rule making power

1. It should provide a simplified and inexpensive procedure for the speedy disposition of cases.
2. It should be uniform for all courts of the same grade.
3. It should not diminish, increase, or modify substantive rights.

Requirements for the decisions of the SC

1. The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court.
2. A certification to this effect signed by the Chief Justice shall be issued.
3. A copy thereof shall be attached to the record of the case and served upon the parties.
4. Any Member who took no part, or dissented, or abstained from a decision or resolution, must state the reason therefor (1987 Constitution, Art. VIII, Sec. 13).

NOTE: No decision shall be rendered by any court without expressing therein clearly and distinctly the

facts and the law on which it is based (1987 Constitution, Art. VIII, Sec. 13).

When change of venue is permitted

Where there are serious and weighty reasons present, which would prevent the court of original jurisdiction from conducting a fair and impartial trial, the Court has been mandated by Sec. 5(4), Art. VIII to order a change of venue so as to prevent a miscarriage of justice.

In this case, that fact that the respondent filed several criminal cases for falsification in different jurisdictions, which unduly forced Navaja to spend scarce resources to defend herself cannot be considered as compelling reason which would prevent the MCTC from conducting a fair and impartial trial (*Navaja v. de Castro*, G.R. No. 182926, June 22, 2015).

The authority vested in the Congress and Supreme Court is separate and distinct

CONGRESS	SUPREME COURT
Authority to define, prescribe, and apportion the jurisdiction of the various courts (1987 Constitution, Art. VIII, Sec. 2)	Power to promulgate rules of pleading, practice, and procedure [1987 Constitution, Art. VIII, Sec. 5(5)]
Authority to create statutory courts (1987 Constitution, Art. VIII, Sec. 1)	

NOTE: Albeit operatively interrelated, these powers are institutionally separate and distinct, each to be preserved under its own sphere of authority.

When Congress creates a court and delimits its jurisdiction, it is the Court which fixes the procedure through the rules it promulgates.

It was held that the 1st par. of Sec. 14, RA 6770 is not a jurisdiction-vesting provision because it does not define, prescribe, and apportion the subject matter jurisdiction of courts to act on certiorari cases, instead, Congress interfered with a provisional remedy created by this Court under its duly promulgated rules of procedure, which utility is both integral and inherent to every court's exercise of judicial power. *Without the Court's consent to the proscription*, as may be manifested by an adoption of the same as part of the rules of procedure through an administrative circular issued therefor, there thus, stands to be a *violation of the separation of powers principle* (*Carpio-Morales v. CA*, G.R. No. 217126-27, November 10, 2015).

SC as the Presidential Electoral Tribunal (PET)

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the *President or Vice-President*, and may promulgate its rules for the purpose (1987 Constitution, Art. VII, Sec. 4, par. 7). (1999, 2012 Bar)

The PET is an institution independent, but not separate, from the judicial department, *i.e.*, the SC. The SC's method of deciding presidential and vice-presidential election contests, through the PET, is derivative of the exercise of the prerogative conferred by the constitution (*Macalintal v. PET*, G.R. No. 191618, November 23, 2010).

ADMINISTRATIVE SUPERVISION OVER LOWER COURTS (1996, 1999, 2000, 2005, 2008 Bar)

SC's disciplinary power over judges of lower court

1. Only the SC *en banc* has jurisdiction to discipline or dismiss judges of lower courts.
2. *Disciplinary action/dismissal* – Majority vote of the SC Justices who took part in the deliberations and voted therein. (1987 Constitution, Art. VIII, Sec. 11)

NOTE: The Constitution provides that the SC is given exclusive administrative supervision over all courts and judicial personnel.

Administrative cases, which the SC may hear *en banc*, under *Bar Matter No. 209*, include:

1. Administrative judges;
2. Disbarment of lawyers;
3. Suspension of more than 1 year; or
4. Fine exceeding Php 10,000 (*People v. Gacott*, G.R. No. 116049, July 13, 1995).

NOTE: Administrative jurisdiction over a court employee belongs to the SC, regardless of whether the offense was committed before or after employment in the Judiciary. Thus, CSC does not have jurisdiction over an employee of the judiciary for acts committed while said employee was still in the executive branch. (*Ampong v. CSC*, G.R. No. 167916, August 26, 2008)

Disciplinary power over Clerks of Court of Shari'a Circuit Courts as Circuit Registrars

The Clerk of Court of the Shari'a Circuit Court enjoys the privilege of wearing two hats: first, as Clerk of Court of the Shari'a Circuit Court, and second, as Circuit Registrar within his territorial jurisdiction.

This Court does not have jurisdiction to impose the proper disciplinary action against civil registrars. Thus, although he is a member of the Judiciary as Clerk of Court of the Shari'a Circuit Court, a review of the subject complaint reveals that the petitioner seeks to hold the respondent liable as Circuit Registrar.

Test: Nature of the offense and not the personality of the offender. What is controlling is not the designation of the offense but the actual facts recited in the complaint (*Mamiscal v. Clerk of Court, A.M. No. SCC-13-18-J*, July 1, 2015).

ORIGINAL AND APPELLATE JURISDICTION

Original Jurisdiction

1. Cases affecting ambassadors, other public ministers and consuls
2. Petition for certiorari
3. Petition for prohibition
4. Petition for mandamus
5. Petition for quo warranto
6. Petition for habeas corpus

[1987 Constitution, Art. VIII, Sec. 5(1)]

Appellate Jurisdiction

SC may review, revise, reverse, modify, or affirm final judgments and orders of lower courts in:

1. Cases involving the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation
2. Cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto
3. Cases in which the jurisdiction of any lower court is in issue
4. Criminal cases where the penalty imposed is reclusion perpetual or higher
5. Cases where only a question of law is involved

[1987 Constitution, Art. VIII, Sec. 5(2)]



CONSTITUTIONAL COMMISSIONS

Constitutional Commissions

1. Civil Service Commission (CSC)
2. Commission on Elections (COMELEC)
3. Commission on Audit (CoA)

NOTE: The CSC, COMELEC, and CoA are equally pre-eminent in their respective spheres. Neither one may claim dominance over the others. In case of conflicting rulings, it is the judiciary, which interprets the meaning of the law and ascertains which view shall prevail (*CSC v. Pobre, G.R. No. 160508, September 15, 2004*).

Purpose

The creation of the Constitutional Commissions is established in the Constitution because of the extraordinary importance of their functions and the need to insulate them from the undesired political interference or pressure. Their independence cannot be assured if they were to be created merely by statute.

CONSTITUTIONAL SAFEGUARDS TO ENSURE INDEPENDENCE OF COMMISSIONS

Guarantees of independence provided for by the Constitution to the 3 Commissions

1. They are constitutionally-created; may not be abolished by statute of its judicial functions (*1987 Constitution, Art. IX-A, Sec. 1*).
2. Each is conferred certain powers and functions which cannot be reduced by statute (*1987 Constitution, Art. IX-B, C and D*).
3. Each is expressly described as independent (*1987 Constitution, Art. IX-A, Sec. 1*).
4. Chairmen and members are given fairly long terms of office for seven (7) years [*1987 Constitution, Art. IX-B, C and D, Sec. 1(2)*].
5. Chairmen and members cannot be removed except by impeachment (*1987 Constitution, Art. XI, Sec. 2*).
6. Chairmen and members may not be reappointed or appointed in an acting capacity [*1987 Constitution, Art. IX-B, C and D, Sec. 1(2)*].

NOTE: When an ad interim appointment is not confirmed (as it was by-passed or that there was not ample time for Commission on Appointments to pass upon the same), another ad interim appointment may be extended to the appointee without violating the Constitution (*Matibag v. Benipayo, G.R. No. 149036, April 2, 2002*).

7. Salaries of chairmen and members are relatively high and may not be decreased

- during continuance in office (*1987 Constitution, Art. IX-A, Sec. 3; Art. XVIII, Sec. 17*).
8. Commissions enjoy fiscal autonomy (*1987 Constitution, Art. IX-A, Sec. 5*).
9. Each commission may promulgate its own procedural rules, provided they do not diminish, increase or modify substantive rights [though subject to disapproval by the Supreme Court] (*1987 Constitution, Art. IX-A, Sec. 7*).
10. Chairmen and members are subject to certain disqualifications and inhibitions calculated to strengthen their integrity (*1987 Constitution, Art. IX-A, Sec. 2*).
11. Commissions may appoint their own officials and employees in accordance with Civil Service Law (*1987 Constitution, Art. IX-A, Sec. 4*).

NOTE: The Supreme Court held that the “no report, no release” policy may not be validly enforced against offices vested with fiscal autonomy, without violating Art. IX-A, Sec. 5. The “automatic release” of approved annual appropriations to a Constitutional Commission vested with fiscal autonomy should thus be construed to mean that no condition to fund releases may be imposed (*CSC v. DBM, G.R. No. 158791, July 22, 2005*).

Salary

Salaries may be increased by a statute but may not be decreased during incumbent’s term of office.

NOTE: The decrease is prohibited to prevent the legislature from exerting pressure upon the Commissions by “operating on their necessities”. Salaries may be increased, as a realistic recognition of the need that may arise to adjust the compensation to any increase in the cost of living.

Requisites for the effective operation of the rotational scheme of terms of constitutional bodies

1. The original members of the Commission shall begin their terms on a common date;
2. Any vacancy occurring before the expiration of the term shall be filled only for the balance of such term (*Republic v. Imperial, G.R. No. L-8684, March 31, 1995*).

NOTE: The members of the Constitutional Commissions have staggered terms:

- a) To minimize the opportunity of the President to appoint during his own term more than one member or group of members in the Constitutional Commissions; and



- b) To ensure continuity of the body and its policies.

POWERS AND FUNCTIONS OF EACH COMMISSION

Decision-making process in these Commissions

1. Each Commission shall decide matter or cases by a majority vote of all the members within sixty (60) days from submission (*Sec. 7 Art. IX-A*).
 - a. COMELEC may sit *en banc* or in 2 divisions.
 - b. Election cases, including pre-proclamation controversies are decided in division, with motions for reconsideration filed with the COMELEC *en banc*.
 - c. The SC has held that a majority decision decided by a division of the COMELEC is a valid decision.

NOTE: Pursuant to COMELEC Rules of Procedure, when the COMELEC *en banc* is equally divided in an opinion and the necessary majority cannot be had, there shall be a rehearing. If, on rehearing no majority decision is reached, the action or proceeding shall be dismissed if originally commence in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed and all incidental matters, the petition or motion shall be denied (*Mamerto Sevilla v. COMELEC, G.R. No. 202833, March 19, 2013*).

2. As collegial bodies, each Commission must act as one, and no one member can decide a case for the entire commission.
3. Any decision, order or ruling of each Commission may be brought to the SC on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof.

NOTE: When the Court reviews a decision of the COMELEC, it exercises extraordinary jurisdiction thus, the proceeding is limited to issues involving grave abuse of discretion resulting in lack or excess of jurisdiction and not factual findings of the Commission (*Aratuc v. COMELEC, G.R. No. L-49705-09, February 8, 1979*).

The appropriate remedy to invalidate disputed COMELEC resolutions (i.e. final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers) is certiorari under Rule 65 of the Rules of Court. (*Loong v. COMELEC, G.R. No. 93986, December 22, 1992*)

CIVIL SERVICE COMMISSION

(See discussion under Law on Public Officers)

COMMISSION ON ELECTIONS

Composition of the COMELEC

- A. Chairman
- B. Six (6) Commissioners

The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment.

NOTE: Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity (*1987 Constitution, Art. IX-C, Sec. 1[2]*). **(1997, 2005 Bar)**

Qualifications

1. Natural-born citizen;
2. At least 35 years old at the time of appointment;
3. College degree holder; and
4. Not a candidate in any election immediately preceding the appointment.

NOTE: Majority of the members, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years [*1987 Constitution, Art. IX-C, Sec 1(1)*].

Constitutional powers and functions of the COMELEC (1991, 1996, 2001 Bar)

1. *Enforce and administer* all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

Note: COMELEC may order the correction of manifest errors in the tabulation or tallying results during the canvassing and petitions for this purpose may be filed directly with the Commission even after the proclamation of the winning candidates.

2. *Exercise:*
 - a. Exclusive original jurisdiction over all contests relating to the election, returns and qualifications of all elective:
 - i. Regional
 - ii. Provincial
 - iii. City officials
 - b. Exclusive appellate jurisdiction over all contests involving:
 - i. Elective municipal officials decided by trial courts of general jurisdiction.
 - ii. Elective *barangay* officials decided by courts of limited jurisdiction.



c. Contempt powers

- i. COMELEC can exercise this power only in relation to its adjudicatory or quasi-judicial functions. It cannot exercise this in connection with its purely executive or ministerial functions.
- ii. If it is a pre-proclamation controversy, the COMELEC exercises quasi-judicial/ administrative powers.
- iii. Its jurisdiction over contests (after proclamation), is in exercise of its judicial functions.

NOTE: The COMELEC may issue writs of *certiorari*, *prohibition*, and *mandamus* in exercise of its appellate functions.

3. *Decide*, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

NOTE: Questions involving the right to vote fall within the jurisdiction of ordinary courts.

4. *Deputize*, with the concurrence of the President, law enforcement agencies and instrumentalities of the government, including the AFP, for the exclusive purpose of ensuring free, orderly, honest, peaceful and credible elections.
5. *Registration* of political parties, organizations, or coalitions and accreditation of citizens' arms of the COMELEC.
6. *File*, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses and malpractices.

NOTE: The grant of exclusive power to investigate and prosecute cases of election offenses to the COMELEC was not by virtue of the Constitution but by the OEC which was eventually amended by Sec. 43 of RA 9369. Thus, the DOJ now conducts preliminary investigation of election offenses concurrently with the COMELEC and no longer as mere deputies (*Jose Miguel T. Arroyo v. DOJ, et al., G.R. No. 199082, September 18, 2012*).

7. *Recommend* to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.
8. *Recommend* to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.
9. *Submit* to the President and the Congress a comprehensive report on the conduct of each

election, plebiscite, initiative, referendum, or recall.

Remedy of a dissatisfied party in election cases decided by the COMELEC in division

The dissatisfied party may file a motion for reconsideration before the COMELEC *en banc*. If the *en banc*'s decision is still not favorable, the same, in accordance with Sec. 7, Art. IX-A, "may be brought to the SC on *certiorari* within 30 days from receipt of copy thereof." (*Reyes v. RTC of Oriental Mindoro, G.R. No. 108886, May 5, 1995*)

NOTE: The fact that decisions, final orders or rulings of the COMELEC in contests involving elective municipal and *barangay* offices are final, executory and not appealable, (*1987 Constitution, Art. IX-C, Sec. 2[2]*) does not preclude recourse to the SC by way of a special civil action of *certiorari* (*Galido v. COMELEC, G.R. No. 95346, January 18, 1991*).

COMELEC can exercise its power of contempt in connection with its functions as the National Board of Canvassers during the elections

The effectiveness of the quasi-judicial power vested by law on a government institution hinges on its authority to compel attendance of the parties and/or their witnesses at the hearings or proceedings. In the same vein, to withhold from the COMELEC the power to punish individuals who refuse to appear during a fact-finding investigation, despite a previous notice and order to attend would render nugatory the COMELEC's investigative power, which is an essential incident to its constitutional mandate to secure the conduct of honest and credible elections. (*Bedol v. COMELEC, G.R. No. 179830, December 3, 2009*)

Function of Senate Electoral Tribunal (SET)

The SET has jurisdiction to entertain and resolve two types of electoral contests against a Member of the Senate: a) petition for quo warranto, and b) election protest. Mutually exclusive, a petition for quo warranto cannot include an election protest, nor can an election protest include a petition for quo warranto.

Any registered voter who seeks to disqualify a Member of the Senate on the ground of ineligibility or disloyalty to the Republic of the Philippines must file a petition for quo warranto within ten (10) days from the proclamation of the respondent. If however, the basis of ineligibility is based on citizenship, the petition may be filed any time during the respondent's tenure. If the ground is loss of the required qualifications, the petition may be filed at any time during the respondent's tenure, as soon as the required qualification is lost. The petitioner need



CONSTITUTIONAL COMMISSIONS

not be a candidate, unlike in an election protest, which can be filed only by a candidate who duly filed a certificate of candidacy and had been voted for the office of Senator. The period for filing an election protest is thirty (30) days from the proclamation of the protestee.

Under the 2013 Rules of the Tribunal, joint election protests are not allowed, but for good and sufficient reasons, the Tribunal may order the consolidation of individual protests, hear, and decide them jointly.

COMMISSION ON AUDIT

Composition of the COA

- A. Chairman
- B. Two (2) Commissioners

The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of *seven years (7) without reappointment*.

NOTE: Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity [*1987 Constitution, Art. IX-D, Sec. 1(2)*].

Qualifications

1. Natural-born citizen;
2. At least 35 years old at the time of appointment;
3. Certified Public Accountant with not less than ten years of auditing experience, or member of the Philippine Bar who has been engaged in the practice of law; and
4. Not a candidate in any election immediately preceding the appointment.

NOTE: At no time shall all Members of the Commission belong to the same profession [*1987 Constitution, Art. IX-D, Sec 1(1)*].

Powers and duties of COA

1. Examine, audit and settle all accounts pertaining to revenue and receipts of, and expenditures or uses of funds and property owned or held in trust or pertaining to government.
2. Keep general accounts of government and preserve vouchers and supporting papers.
3. Authority to define the scope of its audit and examination, establish techniques and methods required therefore.

NOTE: The power of the Commission to define the scope of its audit and to promulgate auditing rules and regulations and the power to disallow unnecessary expenditures is exclusive **but** its power to examine and audit is not exclusive (*Development Bank of the Philippines v. Commission on Audit, G.R. No. 88435, January 16, 2002*).

4. Promulgate accounting and auditing rules and regulations, including those for prevention and disallowance [*1987 Constitution, Art. IX-D, Sec. 2*].

PROHIBITED OFFICES & INTERESTS

No member of a Constitutional Commission shall, during his tenure:

1. Hold any other office or employment
2. Engage in the practice of any profession
3. Engage in the active management and control of any business which in any way may be affected by the function of his office
4. Be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including GOCCs or their subsidiaries (**1998, 2015 Bar**)

Purpose

1. To compel the chairmen and members of the Constitutional Commissions to devote their full attention to the discharge of their duties; and
2. To remove from them any temptation to take advantage of their official positions for selfish purposes.

JURISDICTION OF EACH CONSTITUTIONAL COMMISSION

CIVIL SERVICE COMMISSION

Scope of the Civil Service (1999, 2003 Bar)

The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters [*1987 Constitution, Art. IX-B, Sec. 2(1)*].

Q: Capablanca, acquired a permanent status as Police Officer 1 after taking the required examinations including the Career Service Professional Examination-Computer Assisted Test (CSP-CAT) given by the Civil Service, However, it was found out that the person in the picture pasted in the Picture Seat Plan as well as



the signature therein when he took the exam is different from the person whose picture and signature is attached in the Personal Data Sheet. CSC conducted preliminary investigation. Capablanca's counsel moved to dismiss arguing that the administrative discipline over police officers falls under the jurisdiction of the PNP and/or NAPOLCOM. Does CSC have jurisdiction and disciplinary authority over a member of the PNP?

A: YES. The CSC, as the central personnel agency of the Government, is mandated to establish a career service, to strengthen the merit and rewards system, and to adopt measures to promote morale, efficiency and integrity in the civil service. Section 12 of Administrative Code of 1987 enumerates the powers and functions of the CSC. Sec. 11 thereof states that CSC has the power to hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Further, Section 28, Rule XIV of the Omnibus Civil Service Rules and Regulations specifically confers upon the CSC the authority to take cognizance over any irregularities or anomalies connected with the examinations. Hence, CSC acted within its jurisdiction (*Capablanca v. Civil Service Commission*, G.R. No. 179370, November 19, 2009).

COMMISSION ON ELECTION

Cases that fall under the jurisdiction of COMELEC by DIVISION

Election cases should be heard and decided by a division. If a division dismisses a case for failure of counsel to appear, the MR may be heard by the division.

NOTE: According to *Balajonda v. COMELEC* (G.R. No. 166032, Feb. 28, 2005), the COMELEC can order immediate execution of its own judgments.

Cases that fall under the jurisdiction of COMELEC EN BANC

Motion for Reconsideration of decisions may be decided by COMELEC *En Banc*. It may also directly assume jurisdiction over a petition to correct manifest errors in the tallying of results by Board of Canvassers.

NOTE: Any decision, order or ruling of the COMELEC in the exercise of its quasi-judicial functions may be brought to the SC on *certiorari* under Rules 64 and 65 of the Revised Rules of Court within 30 days from receipt of a copy thereof.

These decisions or rulings refer to the decision or final order of the COMELEC *en banc* and not of any division thereof.

Acts that fall under the COMELEC's power to supervise or regulate

1. The enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information.
2. Grants, special privileges or concessions granted by the government or any subdivision, agency or instrumentality thereof, including any GOCC or its subsidiary (*1987 Constitution, Art. IX-C, Sec. 4*).

Instances when COMELEC can exercise its constitutional powers and functions

1. During election period – 90 days before the day of the election and 30 days thereafter. In special cases, COMELEC can fix a period.
2. Applies not only to elections but also to plebiscites and referenda.

Jurisdiction of the COMELEC before the proclamation vs. its jurisdiction after proclamation

OVER PRE-PROCLAMATION CONTROVERSY	OVER CONTESTS (AFTER PROCLAMATION)
Due process implications	
COMELEC's jurisdiction is administrative or quasi-judicial and is governed by the less stringent requirements of administrative due process (although the SC has insisted that questions on "qualifications" should be decided only after a full-blown hearing).	COMELEC's jurisdiction is judicial and is governed by the requirements of judicial process.

NOTE: Hence, even in the case of regional or provincial or city offices, it does make a difference whether the COMELEC will treat it as a pre-proclamation controversy or as a contest.

COMMISSION ON AUDIT

The COA cannot be divested of its power to examine and audit government agencies.

No law shall be passed exempting any entity of the Government or its subsidiary in any guise



whatsoever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

The mere fact that private auditors may audit government agencies does not divest the COA of its power to examine and audit the same government agencies (*Development Bank of the Philippines v. COA, G.R. No. 88435, January 16, 2002*).

Audit jurisdiction of the COA on privatized, formerly government-owned banks

Since the PNB is no longer owned by the Government, the COA no longer has jurisdiction to audit it as an institution. Under Sec. 2(2), Art. IX-D of the Constitution, it is a GOCC and their subsidiaries which are subject to audit by the COA. However, in accordance with Sec. 2(1), Art. IX-D, the COA can audit the PNB with respect to its accounts because the Government still has equity in it (*Philippine Airlines v. COA, G.R. No. 91890, June 9, 1995*).

Extent of COA's audit jurisdiction over Manila Economic and Cultural Office (MECO)

The MECO is not a GOCC or government instrumentality. It is a sui generis private entity especially entrusted by the government with the facilitation of unofficial relations with the people in Taiwan without jeopardizing the country's faithful commitment to the One China policy of the PROC. However, despite its non-governmental character, the MECO handles government funds in the form of the "verification fees" it collects on behalf of the DOLE and the "consular fees" it collects under Section 2(6) of EO No. 15, s. 2001. Hence, under existing laws, the accounts of the MECO pertaining to its collection of such "verification fees" and "consular fees" should be audited by the COA (*Funa v. MECO and COA, G.R. No. 193462, February 4, 2014*).

REVIEW OF FINAL ORDERS, RESOLUTIONS & DECISIONS

RENDERED IN THE EXERCISE OF QUASIJUDICIAL FUNCTION

SC's jurisdiction over decisions of the Commissions

1. **COA:** Judgments or final orders of the Commission on Audit may be brought by an aggrieved party to the Supreme Court on *certiorari* under Rule 65. Only when COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the SC entertain a petition for *certiorari* under Rule 65.

2. **CSC:** In the case of decisions of the CSC, Administrative Circular 1-95538 which took effect on June 1, 1995, provides that final resolutions of the CSC shall be appealable by *certiorari* to the CA within 15 days from receipt of a copy thereof. From the decision of the CA, the party adversely affected thereby shall file a petition for review on *certiorari* under Rule 45 of the Rules of Court.
3. **COMELEC:** Only decisions of COMELEC *en banc* may be brought to the Court by *certiorari* since Art. IX-C provides that motions for reconsideration of decisions shall be decided by the Commission *en banc* (*Reyes v. Mindoro, G.R. No. 108886, May 5, 1995*).

Procedural requisite before *certiorari* to the Supreme Court may be availed of

Sec. 1 of Rule 65 provides that *certiorari* may be resorted to when there is no other plain or speedy and adequate remedy. But reconsideration is a speedy and adequate remedy. Hence, a case may be brought to the Supreme Court only after reconsideration.

Rule on appeals

1. Decisions, orders or rulings of the COMELEC/COA may be brought on *certiorari* to the SC under Rule 65.
2. Decisions, orders or rulings of the CSC should be appealed to the CA under Rule 43.

RENDERED IN THE EXERCISE OF ADMINISTRATIVE FUNCTION

Power of the CSC to hear and decide administrative cases

Under the *Administrative Code of 1987*, the CSC has the power to hear and decide administrative cases instituted before it directly or on appeal, including contested appointments.

Body which has the jurisdiction on personnel actions, covered by the civil service

CSC. It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure, that decisions of lower officials (in cases involving personnel actions) be appealed to the agency head, then to the CSC. The RTC does not have jurisdiction over personnel actions (*Olanda v. Bugayong, G.R. No. 140917, October 10, 2003*).

***Certiorari* jurisdiction of the SC over these Commissions**



Proceedings are limited to issues involving grave abuse of discretion resulting in lack or excess of jurisdiction and do not ordinarily empower the Court to review the factual findings of the Commissions (*Aratuc v. COMELEC*, G.R. No. L-49705-09, February 8, 1979).



ELECTION LAW

SUFFRAGE

Suffrage is the right and obligation of qualified citizens to vote in the election of certain local and national officers and in the determination of questions submitted to the people. It includes within its scope election, plebiscite, initiative and referendum (*Nachura, 2014*).

Right of suffrage not absolute

The exercise of the right of suffrage is subject to existing substantive and procedural requirements embodied in our Constitution, statute books, and other repositories of law (*Akbayan-Youth v. COMELEC, G.R. No. 147066, March 26, 2001*).

Scope of Suffrage

1. *Plebiscite* –The electoral process by which an initiative on the Constitution is approved or rejected by the people.
2. *Initiative* - The power of the people to propose amendments to the Constitution or to propose and enact legislations through election called for the purpose [*R.A. 6735, The Initiative and Referendum Act, Sec. 3(a)*].
 - a. Initiative on the Constitution;
 - b. Initiative on statutes; or
 - c. Initiative on local legislation.
3. *Referendum* –The power of the electorate to approve or reject a piece of legislation through an election called for the purpose.
 - i. Referendum on statutes; or
 - ii. Referendum on local laws.
4. *Recall* –The mode of removal of an elective public officer by the people before the end of his term of office.

Election

Election is the means by which people choose their officials for a definite and fixed period and to whom they entrust for the time being the exercise of the powers of government (*Nachura, 2016*).

Components of an election

1. Choosing or selecting candidates to public office by popular vote;
2. Holding of electoral campaign;
3. Conducting of the polls;
4. Listing of votes;
5. Casting and receiving the ballots from the voters;

6. Counting the ballots;
7. Making the election returns; and
8. Proclaiming the winning candidates

Kinds of elections

1. *Regular election* – It is an election participated in by those who possess the right of suffrage, not otherwise disqualified by law, and is registered voters.

NOTE: The SK election is not a regular election because the latter is participated in by youth with ages ranging from 15-21 (now 15-30, per R.A. 10742), some of whom are not qualified voters to elect local or national elective officials (*Paras v. COMELEC, G.R. No. 123169, November 4, 1996*).

2. *Special election* –It is held when there is failure of election on the scheduled date of regular election in a particular place or to fill a vacancy in office before the expiration of the term for which the incumbent was elected.

Rules on construction of election laws

CONSTRUCTION OF ELECTION LAW	
Laws for conduct of elections	<i>Before the election:</i> Mandatory
	<i>After the election:</i> Directory
Laws for Candidates	Mandatory and strictly construed
Procedural rules	Liberally construed in favor of ascertaining the will of the electorate

Election period

GR: The period of election starts at 90 days before and ends 30 days after the election date pursuant to Sec. 9, Art. IX-C of the Constitution and Sec. 3 of B.P. 881, otherwise known as the Omnibus Election Code (OEC).

XPN: Under these same provisions, the COMELEC is not precluded from setting a period different from that provided thereunder (*Aquino v. COMELEC, G.R. No. 211789-90, March 17, 2015*).

QUALIFICATION AND DISQUALIFICATION OF VOTERS

Qualifications for the exercise of suffrage

1. Filipino citizenship;
2. At least 18 years of age;
3. Resident of the Philippines for at least one year;



4. Resident of the place where he proposes to vote for at least six months immediately preceding the election; and
5. Not otherwise disqualified by law (*Art. V, 1987 Constitution, Sec. 1*).

NOTE:

1. These qualifications are continuing requirements; and
2. Congress may not add qualifications but can provide for procedural requirements and disqualifications. However, the disqualifications must not amount to qualifications.

Residence and domicile

In election cases, the Court treats domicile and residence as synonymous terms. Both import not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention (*Pundaodaya v. COMELEC, G.R. No. 179313, September 17, 2009*).

Effect of transfer of residence

Any person, who transfers residence solely by reason of his occupation, profession or employment in private or public service, education, etc., shall not be deemed to have lost his original residence [*OEC, Art. XII, Sec. 117(2); Asistio v. Aguirre, G.R. No. 191124, April 27, 2010*].

Establishing a new domicile

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of this intention. It requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode (*Jalover v. de la Pena, G.R. No. 209286, September 23, 2014*).

Disqualifications for the exercise of suffrage

1. Sentenced by final judgment to suffer imprisonment for not less than one year, unless granted a plenary pardon or granted amnesty;
2. Conviction by final judgment of any of the following:
 - a. Crime involving disloyalty to the government;
 - b. Violation against national security; or
 - c. Firearms laws

NOTE: The right to vote is reacquired upon expiration of five years after service of sentence referred to in the two preceding items.

3. Insanity or incompetence as declared by competent authority (*OEC, Art. XII, Sec. 118*).

NOTE: These are the same grounds for disqualification to register as a voter under, R.A. 8189, *Voter's Registration Act of 1996*, Sec. 11.

REGISTRATION OF VOTERS

Registration

Registration is the act of accomplishing and filing a sworn application for registration by a qualified voter before the election officer of the city or municipality wherein he resides and including the same in the book of registered voters upon approval by the Election registration Board [*RA. 8189, Voter's Registration Act of 1996, Sec. 3(a)*]. It does not confer the right to vote; it is but a condition precedent to the exercise of the right. Registration is a regulation, not a qualification (*Yra v. Abano, G.R. No. 30187, November 5, 1928*).

Double-registrant

It pertains to any person who, being a registered voter, registers anew without filing an application for cancellation of his previous registration [*OEC, Art. XXII, Sec. 261(y)(5)*].

Double registrants are still qualified to vote *provided that COMELEC has to make a determination on which registration is valid, and which is void*. COMELEC laid down the rule in Minute Resolution No. 00-1513 that while the first registration of any voter subsists, any subsequent registration thereto is void *ab initio* (*Maruhom v. COMELEC, G.R. No. 179430, July 27, 2009*).

Q: Shanti filed a petition for the cancellation of the COC of Xander for Mayor of South Upi alleging that Xander was not a registered voter in the Municipality of South Upi since Allen failed to sign his application for registration, thus, the unsigned application for registration has no legal effect. In refutation, Xander asseverated that his failure to sign his application for registration did not affect the validity of his registration since he possesses the qualifications of a voter set forth in the Omnibus Election Code as amended by Sec. 9 of R.A. 8189. Should Allen be disqualified?

A: YES. R.A. 8189 (The Voter's Registration Act of 1996) specifically provides that an application for registration shall contain specimen signatures of the applicant as well as his/her thumbprints, among others. The evidence shows that Allen failed to sign very important parts of the application, which refer to the oath which Xander should have taken to validate and swear to the veracity of the contents appearing in the application for registration. Plainly, from the foregoing, the irregularities surrounding



Xander's application for registration eloquently proclaims that he did not comply with the minimum requirements of RA 8189. This leads to only one conclusion: that Xander, not having demonstrated that he duly accomplished an application for registration, is not a registered voter. Hence, he must be disqualified to run for Mayor (*Gunsi Sr. v. COMELEC, G.R. No. 168792, February 23, 2009*).

Illiterate and disabled voters

Any *illiterate person* may register with the assistance of the Election Officer or any member of an accredited citizen's arms. The application for registration of a *physically disabled person* may be prepared by any relative within the fourth civil degree of consanguinity or affinity or by the Election Officer or any member of an accredited citizen's arm using the data supplied by the applicant. The fact of illiteracy or disability shall be so indicated in the application (*R.A. 8189, Sec. 14*).

NOTE: R.A. 9369 (The Poll Automation Law) now defines a disabled voter as "a person with impaired capacity to use the Automated Election System" [*Sec.2(1)*].

Kinds of registration system

1. Continuing; and
2. Computerized.

System of continuing registration

GR: It is a system where the application of registration of voters shall be conducted daily in the office hours of the election officer during regular office hours.

XPN: No registration shall be conducted during the period starting 120 days before a regular election and 90 days before a special election (*R.A. 8189, Sec. 8*).

Q: On November 12, 2008, COMELEC issued Resolution 8514 setting December 2, 2008 to December 15, 2009 as the period of continuing voter registration. Subsequently, COMELEC issued Resolution 8585 on February 12, 2009 adjusting the deadline of voter registration for the May 10, 2010 national and local elections to October 31, 2009 instead of Dec. 15, 2009 as previously fixed by Resolution 8514. Petitioners challenged the validity of COMELEC Resolution 8585 and seek the declaration of its nullity. Petitioners further contend that COMELEC Resolution 8585 is an encroachment on the legislative power of Congress as it amends the system of continuing voter registration under

Sec. 8 of R.A. 8189. Is COMELEC Resolution 8585 valid?

A: NO. In the present case, the Court finds no ground to hold that the mandate of continuing voter registration cannot be reasonably held within the period provided by *Sec. 8, R.A. 8189*, which is daily during the office hours, except during the period starting 120 days before the May 10, 2010 regular elections. There is thus no occasion for the COMELEC to exercise its power to fix other dates or deadlines thereof.

The case differs from the *Akbayan-Youth v. COMELEC, G.R. No. 147066, March 26, 2001*. In the said case, the Court held that the COMELEC did not abuse its discretion in denying the request of the therein petitioners for an extension of the December 27, 2000 deadline of voter registration for the May 14, 2001 elections. The therein petitioners filed their petition with the court within the 120-day prohibitive period for the conduct of voter registration under *Sec. 8, R.A. 8189*, and sought the conduct of a two-day registration of February 17, and 18, 2001, clearly also within the 120-day prohibited period. In this case, both the dates of filing of the petition and the extension sought are prior to the 120-day prohibitive period. The Court therefore, finds no legal impediment to the extension prayed for (*Kabataan Partylist v. COMELEC, G.R. No. 189868, December 15, 2009*).

Overseas Voting

The process by which qualified citizens of the Philippines abroad exercise their right to vote [*R.A. 10590, Sec. 3(k), amending R.A. 9189, Sec. 3*].

1. Coverage

Qualified citizens of the Philippines may vote for President, Vice-President, Senators and Party-List Representatives, as well as in all national referenda and plebiscites (*R.A. 10590, Sec. 4, amending R.A. 9189*).

2. Qualifications

- a. Filipino citizens abroad;
- b. At least 18 years of age on the day of elections; and
- c. Not otherwise disqualified by law.

3. Disqualifications

- a. Those who have lost their Filipino citizenship in accordance with Philippine laws;
- b. Those who have expressly renounced their Philippine citizenship and who have



pledged allegiance to a foreign country, except those who have reacquired or retained their Philippine citizenship under R.A. 9225;

- c. Those who have committed and are convicted in a final judgment by a Philippine court or tribunal of an offense punishable by imprisonment of not less than one year, such disability not having been removed by plenary pardon or amnesty: Provided, however, that any person disqualified to vote under this subsection shall automatically acquire the right to vote upon the expiration of five years after service of sentence; and
- d. Any citizen of the Philippines abroad previously declared insane or incompetent by competent authority in the Philippines or abroad, as verified by the Philippine embassies, consulates or Foreign Service establishments concerned, unless such competent authority subsequently certifies that such person is no longer insane or incompetent (*R.A. 10590, Sec. 5, amending R.A. 9189*).

Voting by mail

Voting by mail may be allowed in countries that satisfy the following conditions:

1. Where the mailing system is fairly well-developed and secure to prevent the occasion of fraud;
2. Where there exists a technically established identification system that would preclude multiple or proxy voting; and
3. Where the system of reception and custody of mailed ballots in the embassies, consulates and other foreign service establishments concerned are adequate and well-secured (*RA 9189, Sec. 17.1*).

Local absentee voting

It refers to a system of voting whereby government officials and employees, including members of the Armed Forces of the Philippines (AFP), and the Philippine National Police (PNP) as well as members of the media, media practitioners including their technical and support staff (media voters) who are duly registered voters, are allowed to vote for the national positions in places where they are not registered voters but where they are temporarily assigned to perform election duties on election day [*COMELEC Resolution 9637, Sec. 1(a), 13 February 2013*].

Book of voters

Classified as permanent whereby each precinct shall have a permanent list of all registered voters residing within the territorial jurisdiction of the precinct.

Grounds for alteration

1. Deactivation/reactivation;
2. Exclusion/ inclusion;
3. Cancellation of registration in case of death;
4. Annulment of book of voters;
5. New voters; and
6. Transfer of residence.

Deactivation

It is the removal from the registration records from the precinct books of voters and places the same, properly marked and dated in indelible ink, in the inactive file after entering the cause of deactivation.

Grounds for deactivation

1. Any person who has been sentenced by final judgment to suffer imprisonment for not less than one year, such disability not having been removed by plenary pardon or amnesty;

NOTE: The right to vote may be automatically reacquired upon expiration of five years after service of sentence as certified by the clerk of court.

2. Any person who has been adjudged by a final judgment by a competent court or tribunal pf having caused/committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the anti-subversion and firearm laws, or any crime against national security, unless restored to his full civil and political rights in accordance with law;

NOTE: The right to vote may be regained automatically upon expiration of five years after service of sentence.

3. Any person declared by competent authority to be insane or incompetent unless such disqualification has been subsequently removed by a declaration of a proper authority that such person is no longer insane or incompetent;
4. Any person who did not vote in the two successive preceding regular elections as shown by their voting records. For this purpose, regular elections do not include SK elections;



5. Any person whose registration has been ordered excluded by the Court;
6. Any person who has lost his Filipino citizenship (*R.A. 8189, Sec. 27*).

Reactivation

Any voter whose registration has been deactivated may file with the Election Officer a sworn application for reactivation of his registration in the form of an affidavit stating that the grounds for the deactivation no longer exist at any time but not later than 120 days before a regular election and 90 days before a special election (*R.A. 8189, Sec. 28*).

INCLUSION AND EXCLUSION PROCEEDINGS

Inclusion proceedings

Any person whose application for registration has been disapproved by the Board or whose name has been stricken out from the list may file with the court a petition to include his name in the permanent list of voters in his precinct at any time except 105 days prior to a regular election or 75 days prior to a special election.

Exclusion proceedings

Any registered voter, representative of a political party or the Election Officer, may file with the court a sworn petition for the exclusion of a voter from the permanent list of voters giving the name, address and the precinct of the challenged voter at any time except 100 days prior to a regular election or 65 days before special election.

Jurisdiction

1. MTC – original and exclusive;
2. RTC – appellate jurisdiction; and
3. SC – appellate jurisdiction over RTC on question of law.

Who may file, period of filing; and grounds

	Inclusion	Exclusion
Who may file	1. Any private person whose application was disapproved by the Election Registration Board.	1. Any registered voter in the city or municipality (<i>OEC, Sec. 142</i>). 2. Representative

	2. Those whose names were stricken out from the list of voters (<i>OEC, Sec. 139</i>). 3. COMELEC	of political party 3. Election officer (<i>R.A. 8189, Sec. 39</i>). 4. COMELEC
Period for filing	Any time except 105 days before regular election or 75 days before a special election (<i>COMELEC Resolution No. 8820</i>).	Anytime except 100 days before a regular election or 65 days before a special election (<i>COMELEC Resolution No. 9021</i>).
Grounds	1. Application for registration has been disapproved by the board; or 2. Name has been stricken out from the list.	1. Not qualified for possessing disqualification; 2. Flying voters; or 3. Ghost voters.

Res judicata not applicable

The proceedings for the exclusion or inclusion of voters in the list of voters are summary in character. Except for the right to remain in the list of voters or for being excluded therefrom for the particular election in relation to which the proceedings had been held, a decision in an exclusion or inclusion proceeding, even if final and unappealable, does not acquire the nature of *res judicata*. It does not operate as a bar to any further action that a party may take concerning the subject passed upon in the proceeding. Thus, a decision in an exclusion proceeding would neither be conclusive on the voter's political status, nor bar subsequent proceedings on his right to be registered as a voter in any other election (*Domino v. COMELEC, G.R. No. 134015, July 19, 1999*).

Voter using fake address not excluded

A citizen cannot be disenfranchised for the flimsiest of reasons. Only on the most serious grounds, and upon clear and convincing proof, may a citizen be deemed to have forfeited this precious heritage of freedom (*Asistio v. Aguirre, G.R. No. 191124, April 27, 2010*).

POLITICAL PARTIES



Any organized group of citizens advocating an ideology or platform, principles, and policies for the general conduct of government and includes its branches and divisions (*OEC, Sec.6*).

To acquire juridical personality, qualify for accreditation, and to be entitled to the rights of political parties, a political party must be registered with the COMELEC.

NOTE: R.A 7941 does not require national and regional parties or organizations to represent the “marginalized and underrepresented” sectors (*Atong Paglaum v. COMELEC, G.R. No. 203766, April 2, 2013*).

JURISDICTION OF COMELEC OVER POLITICAL PARTIES

Art. IX-C of the Constitution, Sec. 2(5) grants the Commission the power to register political parties. It also has the power to require candidates to specify in their certificates of candidacy their political affiliation, allow political parties to appoint watchers, limit their expenditures, and determine whether their registrations should be cancelled in appropriate proceedings. These powers necessarily include the jurisdiction to resolve issues of political leadership in a political party, and to ascertain the identity of political party and its legitimate officers (*Palmares v. COMELEC, G.R. No. 86177, August. 31, 1989*).

Kinds of Parties

1. *National party*—It means that their constituency is spread over the geographical territory of at least a majority of the regions;
2. *Regional party*—It denotes that their constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region; or
3. *Sectoral party* – It refers to an organized group of citizens belonging to any of the following sectors: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals whose principal advocacy pertains to the special interests and concerns of their sector.

REGISTRATION OF POLITICAL PARTIES

Registration as Political Party

In order to acquire juridical personality as a political party, to entitle it to the benefits and privileges

granted under the Constitution and the laws, and in order to participate in the party-lists system, the group must register with the Commission on Elections by filing with the Comelec not later than 90 days before the election a verified petition stating its desire to participate in the partylist system as a national, regional, sectoral party or organization or a coalition of such parties or organizations (*Nachura, 2014*).

Registration in the Party-List System

Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than 90 days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional, or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitutions, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information (*R.A. 7941, Sec. 5*).

Purpose of registration

A party, organization or coalition must be registered in order to:

1. Acquire juridical personality;
2. Entitle it to rights and privileges granted to political parties; and
3. Participate in the party-list system (*B.P. 881, Sections 60 and 61*).

Effect of non-registration

No votes cast in favor of political party, organization or coalition shall be valid except for those registered under the party-list system (*1987 Constitution, Article IX-C, Sec. 7*).

The following parties cannot be registered:

The COMELEC may, *motu proprio* or upon verified complaint and after due notice and hearing, cancel the registration of a party, organization or coalition on any of the following grounds:

1. The party is a religious sect or denomination, organization or association, organized for religious purposes;
2. Advocates violence or unlawful means to seek its goal;
3. Those which refuse to adhere to the Constitution;
4. Foreign party or organization; or
5. Receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any



of its officers or members or indirectly through third parties for partisan election purposes.

Grounds for cancellation of registration:

1. Receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
2. Violates or fails to comply with laws, rules or regulations relating to elections;
3. Declares untruthful statements in its petition;
4. Ceased to exist for at least one year; or
5. Fails to participate in the last two preceding elections or fails to obtain at least 2% of the votes cast under the party-list system in the two preceding elections for the constituency in which it has registered (R.A. 7941, Sec. 6).

Q: Magdalo sa Pagbabago (MAGDALO) filed its Petition for Registration with the respondent Commission on Elections (COMELEC), seeking its registration and/or accreditation as a regional political party based in the National Capital Region (NCR) for participation in the 2010 National and Local Elections. It was represented by its Chairperson, Senator Antonio F. Trillanes IV (Trillanes), and its Secretary General, Francisco Ashley L. Acedillo (Acedillo). Taking cognizance of the Oakwood incident, wherein MAGDALO seized the hotel occupied by civilians, marched in the premises in full battle gear with ammunitions, and planted explosives in the building, the COMELEC denied the Petition, claiming that MAGDALO's purpose was to employ violence and unlawful means to achieve their goals.

Was the denial of the petition proper?

A: YES. Under Article IX-C, Section 2(5) of the 1987 Constitution, parties, organizations and coalitions that "seek to achieve their goals through violence or unlawful means" shall be denied registration. This disqualification is reiterated in Section 61 of B.P. 881, which provides that "no political party which seeks to achieve its goal through violence shall be entitled to accreditation."

In the present case, the Oakwood incident was one that was attended with violence. As publicly announced by the leaders of MAGDALO during the siege, their objectives were to express their dissatisfaction with the administration of former President Arroyo and to divulge the alleged corruption in the military and the supposed sale of arms to enemies of the state. Ultimately, they

wanted the President, her cabinet members, and the top officials of the AFP and the PNP to resign. The rash methods by which MAGDALO opted to ventilate the grievances of its members and withdraw its support from the government constituted clear acts of violence. The COMELEC did not, therefore, commit grave abuse of discretion when it treated the Oakwood standoff as a manifestation of the predilection of MAGDALO for resorting to violence or threats thereof in order to achieve its objective (*Magdalo Para sa Pagbabago v. COMELEC*, G.R. No. 190793, June 19, 2012).

CANDIDACY

Candidate

It refers to any person aspiring for or seeking an elective public office, who has filed a Certificate of Candidacy (CoC) by himself or through an accredited political party, aggroupment or coalition of parties [*OECSec. 79(a)*].

Any person may thus file a CoC on any day within the prescribed period for filing a CoC, yet that person shall be considered a candidate, for purposes of determining one's possible violations of election laws, only during the campaign period (*Penera v. COMELEC*, G.R. No. 181613, November 25, 2009; R.A. 9369, Poll Automation Law, Sec. 15).

QUALIFICATIONS AND DISQUALIFICATION OF CANDIDATES

Qualifications of Candidates

I. National level

A. For President and Vice-President

1. Natural-born citizen;
2. At least 40 years old on the day of the election;
3. Able to read and write;
4. Registered voter; and
5. Resident of the Philippines for at least 10 years immediately preceding the day of the election (*1987 Constitution, Art. VII, Sections 2 and 3*).

B. For Senator

1. Natural-born citizen;
2. At least 35 years old on the day of the election;
3. Able to read and write;
4. Registered voter; and
5. Resident of the Philippines for not less than two years immediately preceding the day of the election (*1987 Constitution, Art. VI, Sec. 3*).



II. Local level

A. For District Representatives

1. Natural-born citizen;
2. Registered voter in the district in which he shall be elected;
3. Resident of the same district for a period not less than one year immediately preceding the day of the election;
4. Able to read and write; and
5. At least 25 years old on the day of the election (*1987 Constitution, Art. VI, Sec. 6*).

B. For Governor, Vice Governor, Mayor, Vice-Mayor, Punong Barangay and Sangguniang Members (1994, 2005 Bar)

1. Citizen of the Philippines;
2. Registered voter in the barangay, municipality, city, or province or, in the case of a member of the *Sangguniang Panlalawigan, Sangguniang Panlungsod*, or *Sangguniang Bayan*, the district where he intends to be elected;
3. Resident therein for at least one year immediately preceding the day of the election;
4. Able to read and write Filipino or any other local language or dialect (*R.A. 7160 Local Government Code of the Philippines, Sec. 39*).

NOTE:

1. Congress may not add to qualifications for elective officials provided in the Constitution; and
2. Qualifications prescribed by law are continuing requirements and must be possessed for the duration of the officer's active tenure (*Frisvaldo v. COMELEC, G.R. No. 87193, June 23, 1989*).

Purpose of the residency requirement

The minimum requirement under our Constitution and election laws for the candidates' residency in the political unit they seek to represent has never been intended to be an empty formalistic condition. It carries with it a very specific purpose: to prevent "stranger[s] or newcomer[s] unacquainted with the conditions and needs of a community" from seeking elective offices in that community (*Jalover v. de la Pena, G.R. No. 209286, September 23, 2014*).

Registered property as residency proof

The fact that a candidate has no registered property under his name in the locality wherein he seeks to be elected does not belie his actual residence therein because property ownership is not among the qualifications required of candidates for local election. It is enough that he should live in the

locality, even in a rented house or that of a friend or relative (*Jalover v. dela Pena, ibid.*).

Q: Caballero was a natural-born Filipino who had his domicile of origin in Uyugan, Batanes. However, he later worked in Canada and became a Canadian citizen. Notwithstanding, he frequently visited Uyugan, Batanes during his vacation from work in Canada. Where is his residence for the purpose of elections?

A: CANADA. In *Coquilla v. COMELEC*, SC ruled that naturalization in a foreign country may result in an abandonment of domicile in the Philippines. This holds true in Caballero's case as permanent resident status in Canada is required for the acquisition of Canadian citizenship. Hence, Caballero had effectively abandoned his domicile in the Philippines and transferred his domicile of choice in Canada. His frequent visits to Uyugan, Batanes during his vacation from work in Canada cannot be considered as waiver of such abandonment (*Caballero v. COMELEC, G.R. No. 209835, September 22, 2015*).

Grounds for disqualification (1994, 1999, 2010 Bar)

1. Declared as incompetent or insane by competent authority;
2. Convicted by final judgment for subversion, insurrection, rebellion, or any offense for which he has been sentenced to a penalty of 18 months imprisonment;
3. Convicted by final judgment for a crime involving moral turpitude;
4. Election offenses under Sec. 261 of the OEC;
5. Committing acts of terrorism to enhance candidacy
6. Spending in his election campaign an amount in excess of that allowed;
7. Soliciting, receiving, or making prohibited contributions;
8. Not possessing qualifications and possessing disqualifications under the Local Government Code;
9. Sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment within two years after serving sentence;
10. Removed from office as a result of an administrative case;
11. Convicted by final judgment for violating the oath of allegiance to the Republic;
12. Dual citizenship (more specifically, dual allegiance)
13. Fugitives from justice in criminal or non-political cases here or abroad;



14. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right;
15. Insane or feeble-minded;
16. Nuisance candidate;
17. Violation of Sec. 73 OEC with regard to CoC; or
18. Violation of Sec. 78 on material misrepresentation in the CoC.

Effect of an unsworn renunciation of foreign citizenship

Failure to renounce foreign citizenship in accordance with the exact tenor of Sec. 5(2) of R.A. 9225 renders a dual citizen ineligible to run for and thus hold any elective public office (*Sobejana-Condon v. COMELEC*, G.R. No. 198742, August 10, 2012).

FILING OF CERTIFICATES OF CANDIDACY

EFFECT OF FILING

No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein (*OEC, Sec. 73*).

The certificate of candidacy shall be filed by the candidate personally or by his duly authorized representative at any day from the commencement of the election period but not later than the day before the beginning of the campaign period. In cases of postponement or failure of election, no additional certificate of candidacy shall be accepted except in cases of substitution of candidates (*OEC, Sec. 75*).

A CoC evidences candidate's statutory eligibility to be elected for an elective post. It is the document which formally accords upon a person the status of a candidate (*Tagolino v. HRET and Lucy Torres-Gomez*, G.R. No. 202202, March 19, 2013).

NOTE: A CoC may be amended before the elections, even after the date of its filing.

Provisions of the election law on certificates of candidacy are mandatory in terms. However, after the elections, they are regarded as directory so as to give effect to the will of the electorate (*Saya-Ang Sr. v. COMELEC*, G.R. No. 155087, November 28, 2003).

Purpose

1. Enable the voters to know, at least 60 days before the regular election, the candidates among whom they have to choose; and
2. Avoid confusion and inconvenience in the tabulation of the votes cast (*Miranda v. Abaya*, G.R. No. 136351, July 28, 1999).

Filing CoC on the tenure of incumbency

1. *As to appointive official* – He/she is considered *ipso facto* RESIGNED from his office upon the filing of his CoC. and such resignation is irrevocable (*OEC, Sec. 66*)(**2002 Bar**);
2. *As to elective official* – It has no effect. The candidate shall continue to hold office, whether he is running for the same or a different position (*Fair Elections Act, Sec. 14, expressly repealed B.P. 881, Sec. 67*).

Q: Do the deemed-resigned provisions which are applicable to appointive officials and not to elective officials violate the equal protection clause of the constitution?

A: NO. Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority (*Quinto v. COMELEC*, G.R. 189698, December 1, 2009).

Effect of filing two certificates of candidacy

It disqualifies the person to run for both elective positions (*OEC, Sec. 73*).

However, before the expiration of the period for the filing of CoC, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the CoC for the other office or office/s. A person who has filed a certificate of candidacy may, prior to election, withdraw the same. The filing of a withdrawal certificate of candidacy shall not affect whatever civil, criminal, or administrative liabilities as candidate may have incurred (*COMELEC Resolution 8678, Sec. 1*).

SUBSTITUTION OF CANDIDATES

Substitution (1995 & 2009 Bar)

An official candidate of a duly registered political party or coalition who dies, withdraws, or is disqualified for any cause after the last day for the filing of CoCs may be substituted by a candidate belonging to, and nominated by, the same political party or coalition.



No substitute shall be allowed for any independent candidate.

The substitute for a candidate, who died or is disqualified by final judgment, may file a CoC up to mid-day of Election Day; *Provided* that, the substitute and the substituted have the same surnames.

If the death or disqualification should occur between the day before the election and mid-day of Election Day, the substitute candidate may file a CoC with any Board of Election Inspectors, Election Officers, Provincial Election Supervisor, or Regional Election Director, as the case may be, in the political subdivision where such person is a candidate, or in the case of a candidate for President, Vice-President or Senator, with the Law Department; *Provided* that, the substitute and the substituted candidate have the same surnames (*COMELEC Resolution 9984, August 18, 2015.*)

Requisites for valid substitution

1. The substitute must belong to the same party or coalition; and
2. The deceased, disqualified or withdrawn candidate must have duly filed a *valid* CoC.

NOTE: The second requisite is a condition *sine qua non* (*Tagolino v. HRET and Lucy Torres-Gomez, G.R. No. 202202, March 19, 2013*).

Q: Raphael and Angelo filed their CoCs for the position of Mayor of Lucena City. Angelo filed a petition to disqualify Raphael, alleging that Raphael still filed his CoC despite knowing that he had exceeded the 3-term limit as Mayor of Lucena City. COMELEC First Division disqualified Raphael. Marian, the wife of Raphael, filed her own CoC in substitution of her husband, Raphael. Can Marian validly substitute her husband?

A: NO. A disqualified candidate may only be substituted if he had a valid CoC in the first place because, if the disqualified candidate did not have a valid and seasonably filed CoC, he is and was not a candidate at all. If a person was not a candidate, he cannot be substituted under Sec. 77 of the OEC. If we were to allow the so-called "substitute" to file a "new" and "original" CoC beyond the period for the filing thereof, it would be a crystalline case of unequal protection of the law. Thus, there was no valid candidate for Marian to substitute due to Raphael's ineligibility. The existence of a valid CoC is therefore a condition *sine qua non* for a disqualified candidate to be validly substituted (*Tagolino v. HRET and Lucy Torres-Gomez, G.R. No. 202202, March 19, 2013*).

Q: James was a candidate for Vice Mayor in the First Order City. His Certificate of Nomination and Acceptance (CONA) was signed by his party's chapter president Lorena. It appears, however, that his chapter president was not authorized by their national party leader to sign James' CONA. So, COMELEC considered him an independent candidate instead of being a candidate by his party. Subsequently, James' party submitted proof that Romualdez was authorized to sign James' CONA. Few days after filing his CoC, James died due to a heart attack. Marcelina, James' wife, filed her CoC to substitute her deceased husband. James, despite his demise, received twice as much votes as Winston, James' rival for the position. Winston then questioned the substitution of Marcelina saying that an independent candidate cannot be substituted. COMELEC agreed with Winston. Marcelina sought to reverse COMELEC's decision before the SC. Who should the SC favor?

A: Marcelina. Petitioner's deceased husband's name remained on the ballot notwithstanding his death even before the campaign period for the local elections began on March 29, 2013. Yet, he received almost twice the number of votes as the second placer, private respondent, in a decisive victory. Since the people could not have possibly meant to waste their votes on a deceased candidate, we conclude that petitioner was the undisputed choice of the electorate as Vice Mayor on the apparent belief that she may validly substitute her husband. That belief was not contradicted by any official or formal ruling by the COMELEC prior to the elections.

The late submission of the authority to sign the CONA to the COMELEC was a mere technicality that cannot be used to defeat the will of the electorate in a fair and honest election. Non-compliance with formal requirements laid down in election laws when not used as a means for fraudulent practice will be considered a harmless irregularity. Allowing the belated submission of the authority to sign CONAs will not result in the situation proscribed by Section 77 of the Omnibus Election Code – that an independent candidate will be invalidly substituted. In the case at bar, neither the COMELEC nor private respondent contended the deceased was not in fact a *bona fide* member of his party. The record is bereft of any allegation that the authority was nonexistent, forged or in any way defective. The only issue was that it was not submitted within the prescribed deadline (*Engle v. COMELEC, G.R. No. 215995, January 19, 2016*).

Stray votes

In case of valid substitutions after the official ballots have been printed, the votes cast for the substituted



candidates shall be considered as stray votes but shall not invalidate the whole ballot. For this purpose, the official ballots shall provide spaces where the voters may write the name of the substitute candidates if they are voting for the latter: Provided, however, that if the substitute candidate of the same family name, this provision shall not apply [R.A. 9006(Fair Elections Act), Sec. 12].

No substitution under Sec. 78 of OEC

Sec. 77, OEC requires that there be a candidate in order for substitution to take place. Thus, if a person's CoC had been denied due course to and/or cancelled under Sec. 78, OEC, he or she cannot be validly substituted in the electoral process. Stated differently, since there would be no candidate to speak of under a denial of due course to and/or cancellation of a CoC case, then there would be no candidate to be substituted (*Tagolinov. HRET and Lucy Torres-Gomez, G.R. No. 202202, March 19, 2013*).

MINISTERIAL DUTY OF COMELEC TO RECEIVE CERTIFICATES

Duty of the COMELEC in receiving CoCs

GR: The COMELEC shall have the ministerial duty to receive and acknowledge receipt of the certificates of candidacy. *Provided*, that said certificates are under oath and contain all the required data and in the form prescribed by the Commission (OEC, Sec. 7; *Cerafica v. COMELEC, G.R. No. 205136, December 2, 2014*).

XPNS: COMELEC may go beyond the face of the CoC in the following:

1. Nuisance candidates(OEC, Sec. 69);
2. Petition to deny due course or to cancel a CoC(OEC, Sec. 78); or
3. Filing of a disqualification case on any of the grounds enumerated in Sec. 68, OEC.

NUISANCE CANDIDATES

Any registered candidate for the same office may file a petition to declare a duly registered candidate as a nuisance candidate, personally or through duly authorized representative with COMELEC, within five days from the last day of filing of CoC[R.A. 6646 (*The Electoral Reforms Law of 1987*), Sec. 5].

Grounds

The COMELEC may *motu proprio* or upon verified petition refuse to give due course to or cancel a certificate of candidacy if shown that it was filed to:

1. Put the election process in mockery or disrepute;

2. Cause confusion among the voters by the similarity of the names of the registered candidates; or
3. Clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the CoC has been filed and thus prevent a faithful determination of the true will of the electorate (OEC, Sec. 69).

Power of COMELEC

GN: The COMELEC may, *motu proprio* or upon verified petition of an interested party, refuse to give due course to or cancel a CoC upon showing of the above-stated circumstances (OEC, Sec. 69).

XPN: The COMELEC cannot *motu proprio* deny due course to or cancel an alleged nuisance candidate's certificate of candidacy without providing the candidate his opportunity to be heard (*Timbol v. COMELEC, G.R. No. 206004, February 24, 2015*).

Effect of voting a nuisance candidate

The votes cast for a nuisance candidate are **not stray** but counted in favor of the *bona fide* candidate (*Dela Cruz v. COMELEC, G.R. No. 192221, November 13, 2012*).

PETITION TO DENY DUE COURSE OR CANCEL A CERTIFICATE OF CANDIDACY

Petition to deny due course or cancel a CoC (2009 Bar)

A verified petition seeking to deny due course or to cancel a CoC may be filed by any person exclusively on the ground that any material representation contained therein as required under Sec. 74 of the OEC is false(B.P. 881, Sec. 78), provided that:

1. The false representation pertains to material matter affecting substantive rights of a candidate; and
2. The false representation must consist of deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible(*Salcedo II v. COMELEC, G.R. No. 135886, August 16, 1999*).

NOTE: These two requirements must concur to warrant the cancellation of the CoC.

Period to file a petition to deny due course to or cancel a CoC

The petition may be filed at any time not later than 25 days from the time of the filing of the CoC and shall be decided, after due notice and hearing, not later than 15 days before the election.



NOTE: Jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC in division, not with the COMELEC en banc (*Gravida v. Sales, G.R. No. 122872, September 10, 1997*).

Material misrepresentation

Material misrepresentation in a CoC refers to the candidate's eligibility or qualification for elective office, which includes false statement as to age, residency, citizenship, being a registered voter and any other legal qualifications necessary to run for an elective office.

NOTE: A misrepresentation which does not affect one's qualification to run or hold public office will not suffice for the cancellation of a CoC.

Q: Quino Fernando and Prosecia Fernando both ran for the position of Mayor in the Municipality of Alicia, Isabela. Carlo Ray filed a disqualification complaint against Prosecia since she was using the surname Fernando when in fact her marriage to German Fernando was void. Prosecia claims that she did not know that German has a subsisting marriage when they got married. Did Prosecia commit any material misrepresentation by using Fernando as her surname when in fact their marriage was void?

A: NO. A false representation under Sec. 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." It must be made with an intention to deceive the electorate as to one's qualifications for public office. The use of a surname, when not intended to mislead or deceive the public as to one's identity, is not within the scope of the provision (*Salcedo II v. COMELEC, supra.*).

EFFECT OF DISQUALIFICATION

1. *Final judgment before election* – The candidate shall not be voted for, and the votes cast for him shall not be counted (**1991 Bar**).

2. *No final judgment until after election and receives the highest number of votes in the election* – The Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and upon motion of the complainant or any intervenor, may, during the pendency thereof, order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Q: Should the Vice Mayor succeed the Mayor's CoC be denied or cancelled subsequent to his

proclamation because it was later found that he is ineligible to run for the position?

A: NO. The candidate for the same position who garnered the next highest vote shall be proclaimed as the winner. Technically, such candidate is the first-placer for the reason that a void CoC cannot produce any legal effect and therefore, an ineligible candidate is not considered a candidate at all (*Maquiling v. COMELEC, G.R. No. 195649, April 16, 2013*).

Q: What will happen to the votes of the electorate for the ineligible candidate?

A: It will not be considered at all. However, even if it is disregarded, the will of the electorate is still respected because the votes cast in favor of an eligible candidate do not constitute the sole and total expression of the sovereign voice (*Maquiling v. COMELEC, ibid.*).

Q: What if the Mayor was disqualified because of an election offense under Sec. 68 of the Omnibus Election Code? Who will succeed?

A: Vice Mayor. The effect of the Mayor's disqualification is a permanent vacancy in the position. Under Sec. 44 of the LGC, in case of permanent vacancy in the position of Mayor, the Vice Mayor will succeed.

Application of the rule on succession

MAQUILING CASE	E.R. EJERCITO CASE
The rule on succession under the LGC will not apply because the issue here is his citizenship which is a continuing requirement. Being a continuing requirement, he must possess it before and after elections until the end of his term. His use of U.S. Passport after reacquiring his citizenship negated his Affidavit of Renunciation. As a dual citizen, he is disqualified from the very beginning to run for office. With him being barred to run for office, he is not considered as a	The rule on succession provided for in Sec. 44 of R.A. 7160 or the LGC applies in this case because what occurred here after his disqualification is a permanent vacancy in the position. What is involved in this case is the commission of an election offense (overspending) provided for in Sec. 68 of OEC which, in effect, disqualifies the candidate from holding office. Here, the candidate possesses all the qualifications and none of the disqualifications to run for office. Therefore, he is a valid candidate



candidate at all (<i>Maquilang v. COMELEC</i> , G.R. No. 195649, April 16, 2013).	(<i>Emilio Ramon "E.R." P.</i> <i>Ejercito v. Comelec</i> , G.R. No. 212398. November 25, 2014).
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NOTE: Correlate the foregoing with the discussion under Remedies and Jurisdiction in Election Law.

WITHDRAWAL OF CANDIDATES

A person who has filed CoC may, prior to the election, withdraw the same by submitting to the COMELEC a written declaration under oath (*OEC*, Sec. 73).

The withdrawal of the certificate of candidacy shall effect the disqualification of the candidate to be elected for the position. The withdrawal of the withdrawal, for the purpose of reviving the certificate of candidacy, must be made within a period provided by law for the filing of certificates of candidacy (*Monsale v. Nico*, G.R. No. L-2539, May 28, 1949).

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal, or administrative liabilities which a candidate may have incurred (OEC, Sec. 73).

CAMPAIGN

Election campaign

An act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

1. Forming organizations, associations, clubs, committees, or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;
2. Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;
3. Making speeches, announcements, or commentaries, or holding interviews for or against the election of any candidate for public office;
4. Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or
5. Directly or indirectly soliciting votes, pledges or support for or against a candidate (*OEC*, Sec. 79).

NOTE: The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition

of parties and public expressions of opinions or discussions of probable issue in a forthcoming election or on attributes or criticisms of probable candidates proposed to be nominated in a forthcoming political party convention shall not be considered as election campaign or partisan election activity (*OEC*, Sec. 79).

Persons prohibited to campaign

1. Members of the Board of Election Inspectors (*OEC*, Sec. 173);
2. Civil service officers or employees[1987 Constitution, Art. IX-B, Sec. 2(4)];
3. Members of the military [1987 Constitution, Art. XVI, Sec. 5(3)]; and
4. Foreigners, whether juridical or natural persons.

Period to campaign

1. *Presidential and Vice presidential election* – 90 days before the day of the election;
2. *Election of members of the Congress and local election* – 45 days before the day of the election;
3. *Barangay Election* – 15 days before the day of the election; and
4. *Special election under Art. VIII, Sec. 5(2) of the Constitution* – 45 days before the day of the election.

NOTE: The campaign periods **shall not** include the day before and the day of the election (*OEC*, Sec. 3).

PREMATURE CAMPAIGNING

Premature campaign (2012 Bar)

GN: Any election campaign or partisan political activity for or against any candidate outside of the campaign period is prohibited and shall be considered as an election offense (*OEC*, Sec. 80).

XPN: Political parties may hold political conventions to nominate their official candidates within 30 days before the start of the period for filing a certificate of candidacy [*R.A. 9369 (Poll Automation Law)*, Sec. 15].

NOTE: The use of lawful election propaganda under the Fair Elections Act is subject to the supervision and regulation by the COMELEC in order to prevent premature campaigning and to equalize, as much as practicable, the situation of all candidates by preventing popular and rich candidates from gaining undue advantage in exposure and publicity on account of their resources and popularity (*Chavez v. COMELEC*, G.R. No. 162777, Aug. 31, 2004).

Q: Petitioner Kardo and respondent Alakdan ran for mayor of Sta. Monica, Surigao Del Norte



during the May 14, 2007 elections. Alakdan's political party held a motorcade preceding the filing of his CoC announcing his candidacy for mayor. Alakdan filed his CoC on March 29, 2007. Because of this, Kardo filed a petition to disqualify Alakdan for engaging in premature campaigning in violation of Sec. 80 and 68 of the OEC. Did Alakdan violate the prohibition against premature campaigning?

A: NO. The campaign period for local officials began on March 30, 2007 and ended on 12 May 2007. Alakdan filed his CoC on March 29, 2007. Alakdan was thus a candidate on 29 March 2007 only for purposes of printing the ballots under Sec. 11 of R.A. 8436. Acts committed by Alakdan prior to March 30, 2007, the date when he became a "candidate", even if constituting election campaigning or partisan political activities, are not punishable under Sec. 80 of the OEC. Such acts are within the realm of a citizen's protected freedom of expression. Acts committed by Teofilo within the campaign period are not covered by Sec. 80 as Sec. 80 punishes only acts outside the campaign period.

A candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight - any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period (*Penara v. COMELEC, G.R. No. 181613, November 25, 2009*).

Q: Is a candidate liable for an election offense for acts done before the campaign period?

A: NO. A candidate is liable for an election offense only for acts done during the campaign period, not before. Any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period. The plain meaning of this provision is that the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same partisan political acts are lawful (*Penara v. COMELEC, G.R. No. 181613, November 25, 2009*).

PROHIBITED CONTRIBUTIONS

Contributions

These refer to any gift, donation subscription, loan, advance, or deposit of money or anything of value, or a contract, promise, or agreement to contribute, whether or not legally enforceable, made for influencing the results of the elections (Sec. 94, OEC).

No contribution for purposes of partisan political activity shall be made directly or indirectly by any of the following:

1. Public or private financial institutions, unless such institutions are legally in the business of lending money, and the loan was made in accordance with laws and in the ordinary course of business;
2. Natural and juridical persons operating public utilities or in possession of or exploiting natural resources of the nation;
3. Natural and juridical persons who hold contracts or sub-contracts to supply the government with goods or services or to perform construction or other works;
4. Grantees of franchises, incentives, exemptions, allocations, or similar privileges or concessions by the government;
5. Natural and juridical persons who, within one year prior to the date of the election, have been granted by the government loans or other accommodations in excess of P100,000;
6. Educational institutions which have received grants of public funds not less than P100,000;
7. Officials or employees in the Civil Service or members of the Armed Forces of the Philippines; and
8. Foreigners and foreign corporations (*OEC, Sections 95 and 96*).

Prohibited fund-raising activities

1. Holding any of the following activities if held for raising campaign funds or for the support of any candidate from the start of the elections up to and including election day:
 - a. Dances;
 - b. Lotteries;
 - c. Cockfights;
 - d. Games;
 - e. Boxing bouts;
 - f. Bingo;
 - g. Beauty contests; and
 - h. Entertainments, cinematographic, theatrical, or other performances; and
2. For any person or organization, civic or religious, directly or indirectly, to solicit and/or accept from any candidate for public office or his representative any gift, food, transportation, contribution or donation in cash or in kind.

EXPANDED: normal and customary religious stipends, tithes or collections on Sundays and/or other designated collection days (*OEC, Sec. 97*).

LAWFUL AND PROHIBITED ELECTION PROPAGANDA

Lawful election propaganda



1. Written printed materials (does not exceed 8 ½ in. width by 14 in. length);
2. Handwritten/printed letters;
3. Posters (not exceeding 2x3 ft.) Streamers not larger than 3x8 ft. are allowed at a public meeting or rally or in announcing the holding of such. Maybe displayed five days before the meeting or rally and shall be removed within 24 hours after such.
4. Print ads – ¼ page in broadsheets and ½ page in tabloids thrice a week per newspaper, magazine or other publication during the campaign period (*COMELEC Res. 9615, Sec. 6, January 15, 2013*);
5. Paid advertisement in broadcast media (i.e. TV and radio);
6. Mobile units, vehicles motorcades of all types, whether engine or manpower driven or animal drawn, with or without sound systems or loud speakers and with or without lights; and
7. All other forms of election propaganda not prohibited by the OEC or this Act (*R.A. 9006, The Fair Elections Act, Sec. 3*).

Rules on election propaganda

1. All registered parties and *bona fide* candidates shall have a right to reply to charges published against them;
2. No movie, cinematographic, documentary portraying the life or biography of a candidate shall be publicly exhibited in theatre, TV station, or any public forum during the campaign period;
3. No movie, cinematograph, documentary portrayed by an actor or media personality who is himself a candidate shall be publicly exhibited in a theatre, TV station or any public form during the campaign period;
4. All mass media entities shall furnish the COMELEC with the copies of all contracts for advertising, promoting, or opposing any political party or the candidacy of any person for public office within 5 days after its signing; and
5. Any media personality who is a candidate or is campaign volunteer for or employed or retained in a capacity by any candidate or political party shall be deemed resigned, if so requires by their employer, shall take a LOA from his work as such during campaign period.

Right to reply

All registered parties and candidates shall have the right to reply to charges published or aired against them. The reply shall be given publicity by the newspaper, television, and/or radio station which first printed or aired the charges with the same prominence or in the same page or section, or in the

same time slot as the first statement (*COMELEC Resolution 10049, Sec. 16, February 1, 2016*).

Procedure to invoke the right to reply

Registered parties and candidates may invoke the right to reply by submitting within a non-extendible period of thirty-six (36) hours from first broadcast or publication, a formal verified claim against the mass media entity to the COMELEC, through the appropriate Regional Election Director (RED), or in the case of the NCR, the Education and Information Department (EID) (*COMELEC Resolution 10049, Sec. 16, February 1, 2016*).

Period of resolution

The COMELEC, through the appropriate RED or the EID, shall review the formal verified claim within 36 hours from receipt thereof, and if circumstances warrant, endorse the same to the mass media entity involved, which shall, within 24 hours, submit its report to the RED or EID, as the case maybe, explaining the action it has taken to address the claim. The mass media entity must likewise furnish a copy of the said report to the claimant invoking the right to reply (*COMELEC Resolution 10049, Sec. 16, February 1, 2016*).

Remedy when right to reply not addressed

Should the claimant insist that his/her right to reply was not addressed, he/she may file the appropriate petition and/ or complaint before the COMELEC Main Office (*COMELEC Resolution 10049, Sec. 16, February 1, 2016*).

Prohibited forms of election propaganda

It shall be unlawful:

- a. To print, publish, post or distribute any newspaper, newsletter, newsweekly, gazette or magazine advertising, pamphlet, leaflet, card, decal, bumper sticker, poster, comic book, circular, handbill, streamer, sample list of candidates or any published or printed political matter, and to air or broadcast any election propaganda or political advertisement by television or radio or on the Internet for or against a candidate or group of candidates to any public office, unless they bear and be identified by the reasonably legible, or audible words "*political advertisement paid for*," followed by the true and correct name and address of the candidate or party for whose benefit the election propaganda was printed or aired. It shall likewise be unlawful to publish, print or distribute said campaign materials unless they bear, and are identified by the reasonably legible, or audible words "*political advertisements by*," followed by the true and correct name and address of the payor;



- b. To print, publish, broadcast, display or exhibit any such election propaganda donated or given free of charge by any person or mass media entity to a candidate or party without the written acceptance of the said candidate or party, and unless they bear and be identified by the words "*printed free of charge*," or "*airtime for this broadcast was provided free of charge by*" respectively, followed by the true and correct name and address of the said mass media entity;
- c. To show, display or exhibit publicly in a theater, through a television station, or any public forum any movie, cinematography or documentary, including concert or any type of performance portraying the life or biography of a candidate, or in which a character is portrayed by an actor or media personality who is himself or herself a candidate;
- d. For any newspaper or publication, radio, television or cable television station, or other mass media entity, or any person making use of the mass media to sell or give free of charge print or advertising space or airtime for campaign or election propaganda purposes to any candidate or party in excess of the size, duration or frequency authorized by law or these Rules;
- e. For any radio, television, cable television station, announcer or broadcaster to allow the scheduling of any program, or permit any sponsor to manifestly favor or oppose any candidate or party by unduly or repeatedly referring to, or unnecessarily mentioning his name, or including therein said candidate or party; and
- f. To post, display or exhibit any election campaign or propaganda material outside of authorized common poster areas, in public places, or in private properties without the consent of the owner thereof.

Public places include any of the following:

1. Publicly-owned electronic announcement boards, such as light-emitting diode (LED) display boards located along highways and streets, liquid crystal display (LCD) posted on walls of public buildings, and other similar devices which are owned by local government units, government -owned or -controlled corporations, or any agency or instrumentality of the Government;
2. Motor vehicles used as patrol cars, ambulances, and for other similar purposes that are owned by local government units, government-owned or -controlled corporations, and other agencies and instrumentalities of the Government, particularly those bearing government license plates;

3. Public transport vehicles owned and controlled by the government such as the Metro Rail Transit (MRT), Light Rail Transit (LRT), and Philippine National Railway trains and the like;
4. Waiting sheds, sidewalks, street and lamp posts, electric posts and wires, traffic signages and other signboards erected on public property, pedestrian overpasses and underpasses, flyovers and underpasses, bridges, main thoroughfares, center islands of roads and highways;
5. Schools, public shrines, barangay halls, government offices, health centers, public structures and buildings or any edifice thereof;
6. Within the premises of public transport terminals, owned and controlled by the government, such as bus terminals, airports, seaports, docks, piers, train stations and the like (*COMELEC Resolution 10049, February 1, 2016, Sec. 7*).

ALLOWABLE COMELEC AIR TIME FOR CANDIDATES (Fair Elections Act)

NATIONAL POSITIONS	LOCAL POSITIONS
120 minutes for TV	60 minutes for TV
180 minutes for radio	90 minutes for radio

Aggregate-based airtime limit

COMELEC went beyond the authority granted it by R.A. 9006 in adopting "aggregate basis" in the determination of allowable time. The law, on its face, does not justify the conclusion that the maximum allowable airtime should be based on the totality of possible broadcast in all television or radio stations. The legislative intent relative to airtime allowed is "on a per station basis". Congress intended to provide a more expansive and liberal means by which the candidates, political parties, citizens and other stake holders in the periodic electoral exercise may be given a chance to fully explain and expound on their candidacies and platforms of governance, and for the electorate to be given a chance to know better the personalities behind the candidates.

The assailed rule on "aggregate-based" airtime limits is unreasonable and arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people (*GMA Network, Inc., v. COMELEC, G.R. No. 205357, September 2, 2014*).

COMELEC supervision over media

During the election period the COMELEC may supervise or regulate the media of communication or information to ensure equal opportunity, time, and space among candidates with the objective of holding free, orderly, honest, peaceful, and credible



elections. To allow candidates who are supported by more than one political party to purchase more air time and advertising space than candidates supported by one political party only will deprive the latter of equal time and space in the media (1987 Constitution, Art. IX-C, Sec. 4).

Election Survey

Prohibiting publication of survey results 15 days immediately preceding a national election and seven days before a local election (*R.A. 9006, Sec. 5.4*) violates the constitutional rights of speech, expression and the press because:

1. It imposes a prior restraint on the freedom of expression;
2. It is a direct and total suppression of a category of expression and even though such suppression is only for a limited period; and
3. The governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression (*SWS v. COMELEC, G.R. No. 147571, May 5, 2001*).

Q: May the media be compelled to publish the results of the election survey?

A: NO, but should they decide to publish the said survey for public consumption, they must likewise publish the following information:

- a. The name of the person, candidate, party, or organization that commissioned, paid for, or subscribed to the survey;
- b. The name of the person, polling firm or survey organization which conducted the survey;
- c. The period during which the survey was conducted, the methodology used, including the number of individual respondents and the areas from which they were selected, and the specific questions asked;
- d. The margin of error of the survey;
- e. For each question where the margin of error is greater than that reported under paragraph d the margin of error for that question; and
- f. A mailing address and telephone number at which the sponsor can be contacted to obtain a written report regarding the survey in accordance with the next succeeding paragraph.

The survey, together with raw data gathered to support its conclusions shall be available for inspection, copying and verification by the COMELEC. Any violation of this Section shall constitute an election offense. (*COMELEC Resolution 10049, Sec. 28, February 1, 2016*)

Exit poll

An exit poll is a species of electoral survey conducted by qualified individuals or groups of individuals for the purpose of determining the probable result of an election by confidentially asking randomly selected voters whom they have voted for, immediately after they have officially cast their ballots. The revelation of whom an elector has voted for is not compulsory, but voluntary. Indeed, narrowly tailored countermeasures may be prescribed by the COMELEC, so as to minimize or suppress incidental problems in the conduct of exit polls, without transgressing the fundamental rights of our people (*ABS-CBN Broadcasting Corporation v. COMELEC, G.R. No. 133486, January 28, 2000*).

Requirements in the conduct of exit polls

- a. Pollster shall not conduct their surveys within 50 meters from the polling place, whether said survey is taken in a home, dwelling place and other places;
- b. Pollsters shall wear distinctive clothing and prominently wear their identification cards issued by the organization they represent;
- c. Pollsters shall inform the voters that they may refuse to answer; and
- d. The results of the exit polls may be announced after the closing of the polls on election day, and must identify the total number of respondents, and the places where they were taken. Said announcement shall state that the same is unofficial and does not represent a trend [*R.A. 9006, Sec. 5(5)*].

Q: Does the conduct of exit polls transgress the sanctity and secrecy of the ballot?

A: NO. In exit polls, the contents of the official ballot are not actually exposed. Furthermore, the revelation of whom an elector has voted for is not compulsory, but voluntary.

Voters may also choose not to reveal their identities. Indeed, narrowly tailored countermeasures may be prescribed by the COMELEC, so as to minimize or suppress incidental problems in the conduct of exit polls, without transgressing the fundamental rights of our people (*ABS-CBN Broadcasting Corporation v. COMELEC, G.R. No. 133486, January 28, 2000*).

LIMITATION ON EXPENSES

Lawful expenditures

1. Travelling expenses;
2. Compensation of persons actually employed in the campaign;
3. Telegraph and telephone tolls, postage, freight and express delivery charges;



4. Stationery, printing, and distribution of printed matters relative to candidacy;
5. Employment of watchers at the polls;
6. Rent, maintenance, and furnishing of campaign headquarters, office or place of meetings;
7. Political meetings or rallies;
8. Advertisements;
9. Employment of counsel;
10. Copying and classifying list of voters, investigating and challenging the right to vote of persons registered in the lists; and
11. Printing sample ballots (*OEC, Sec. 102*).

NOTE: The cost of numbers 9, 10, 11 shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred.

Limitations on expenses

The aggregate amount that candidate or party may spend for an election campaign shall be as follows:

- a. *Candidates for President and Vice-President* - Php10.00 for every registered voter;
- b. *For other candidates* - Php3.00 for every voter currently registered in the constituency where the candidate filed his certificate of candidacy;
- c. *For candidates under the above paragraph (b) without any political party and without support from any political party* - Php5.00 for every voter currently registered in the constituency where the candidate filed his certificate of candidacy; and
- d. *For Political Parties and party-list groups* - Php5.00 for every voter currently registered in the constituency or constituencies where it has official candidates (*COMELEC Resolution 10049, Sec. 5, February 1, 2016*).

Election expenses inclusive of contributor, supporter, or donor

Sections 100, 101, and 103 of OEC regulate not just the election expenses of the candidate but also of his contributor, supporter, or donor (*Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014*).

STATEMENT OF CONTRIBUTIONS AND EXPENSES

Every candidate and treasurer of the political party shall, within 30 days after the day of the election, file in triplicate with the offices of the Commission where he filed his COC, except for national positions which should be filed with the Campaign Finance Unit of the COMELEC, a full, true and itemized statement of all contributions and expenditures in connection with the elections (*R.A. 7166, Sec. 14*).

Candidates who withdrew after the filing of their COCs are required to comply with the filing of statement of all contributions and expenses (*Pilar v. COMELEC, G.R. No. 115245, July 11, 1995*).

Effects of failure to file statement of contributions and expenses

No person elected to any public office shall enter upon the duties of his office until he and the political party that nominated him has filed the statement of contributions and expenditures required by law. Except candidates for elective barangay office, failure to file the statements or reports shall constitute an administrative offense (*R.A. 7166, Sec. 14*).

Administrative fines that may be imposed in cases of failure to file said statement

1. First offense - P1,000.00 to P30,000.00, in the discretion of the Commission.
2. Second offense - P2,000.00 to P30,000.00, in discretion of the Commission, and the offender shall be subject to perpetual disqualification to hold public office (*R.A. 7166, Sec. 14*).

BOARD OF ELECTION INSPECTORS (BEI) AND BOARD OF CANVASSERS (BOC)

COMPOSITION & POWERS

Board of Election Inspectors

Constituted by COMELEC for each precinct at least 30 days before the date when the voters' list is to be prepared (regular election) or 15 days before a special election.

Composition of BEI

1. Chairman;
2. Poll Clerk; and

NOTE:

1. The Chairman and the Poll Clerk must be public school teachers and priority to be given to civil service eligible.
2. If there are not enough public school teachers, the teachers in private schools, employees in the civil service, or other citizens of known probity and competence may be appointed, provided that the Chairman shall be a public school.

Where an Automated Election System (AES) is adopted, at least one member of the Board of



Election Inspectors shall be an information technology-capable person, who is trained or certified by the DOST to use the AES (R.A. 9369, Sec. 3).

3. Two members, each representing the two accredited political parties (OEC, Art. XIV Sec. 164).

Qualifications of BEI

1. Good moral character and irreproachable reputation;
2. Registered voter of the city or municipality;
3. Never been convicted of any election offense or any other crime punishable by more than six months of imprisonment, or if he has pending against him an information for any election offense;
4. Able to speak, read and write English or the local dialect; and
5. At least one member of the BEI shall be an information technology-capable person who is trained and certified by the DOST to use the AES (where AES shall be adopted) (OEC, Sec. 166).

Disqualifications of BEI

1. Related within fourth degree of consanguinity or affinity to any member of the BEI;
2. Related within fourth degree of consanguinity or affinity to any candidate to be voted in the polling place or his spouse; and
3. Not engaged in any partisan political activity or take part in the election except to discharge his duties as such and to vote (OEC, Section. 167 and 173).

Period of Constitution of the BEI

At least 30 days before the date when the voters list is to be prepared in accordance with the OEC, in the case of a regular election or 15 days before a special election. (OEC, Sections 167 and 173).

Powers of the BEI

1. Conduct the voting and counting of votes in their respective polling places;
2. Act as deputies of the Commission in the supervision and control of the election in the polling places wherein they are assigned, to assure the holding of the same in a free, orderly and honest manner; and
3. Perform such other functions prescribed by this Code or by the rules and regulations

promulgated by the Commission (OEC, Art. XIV, Sec. 168).

Composition of BOC

1. *Provincial BOC* –
 - a. Chairman- the provincial election supervisor or a senior lawyer in the regional office of the Commission;
 - b. Vice-Chairman- the provincial fiscal; and
 - c. Members- the provincial superintendent of schools and one representative from each of the ruling party and the dominant opposition political party in the constituency concerned entitled to be represented.
2. *City BOC* –
 - a. Chairman- the city election registrar or a lawyer of the Commission; and
 - b. Members- the city fiscal, the city superintendent of schools, and one representative from each of the ruling party and the dominant opposition political party entitled to be represented.
3. *District BOC of Metropolitan Manila* –
 - a. Chairman- a lawyer of the Commission; and
 - b. Members- a ranking fiscal in the district, the most senior district school supervisor in the district to be appointed upon consultation with the Ministry of Justice and the Ministry of Education, Culture and Sports, respectively, and one representative from each of the ruling party and the dominant opposition political party in the constituency concerned.
4. *Municipal BOC* –
 - a. Chairman- the election registrar or a representative of the Commission; and
 - b. Members- the municipal treasurer, the district supervisor or in his absence any public school principal in the municipality, and one representative from each of the ruling party and the dominant opposition political party entitled to be represented.
5. *BOC for newly created political subdivisions* – The Commission shall constitute a board of canvassers and appoint the members thereof for the first election in a newly created province, city or municipality in case the officials who shall act as members thereof have not yet assumed their duties and functions (OEC, Sec. 221).

Powers of the BOC

The board of canvassers is a ministerial body. It is enjoined by law to canvass all votes on election returns submitted to it in due form. Its powers are



"limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained (*Abes v. COMELEC*, G.R. No. L-28348, December 15, 1967).

Canvass by the BOC

Canvassing is the process by which the results in the election returns are tallied and totaled.

Certificate of canvass is the official tabulations of votes accomplished by district, municipal, city, and provincial canvassers based on the election returns, which are the results of the ballot count at the precinct level.

Manner of delivery and transmittal of election returns

CITY AND MUNICIPAL BOC	PROVINCIAL AND DISTRICT BOC IN METROPOLITAN MANILA
The copy of the election returns must be:	
a. Duly placed inside a sealed envelope signed; b. Affixed with the imprint of the thumb of the right hand of all the members of the BEI; and c. Personally delivered by the members of the BEI to the city or municipal BOC under proper receipt to be signed by all the members thereof [OEC, Sec. 299(a)].	Personally delivered by the members of the BEI to the Election Registrar for transmittal to the proper BOC under proper receipt to be signed by all the members thereof [OEC, Sec. 299(b)].

The Election Registrar concerned shall place all the returns intended for the BOC inside a ballot box provided with three padlocks whose keys shall be kept as follows:

- a. One by the election registrar;
- b. Another by the representative of the ruling party; and
- c. The third by the representative of the dominant political opposition party (OEC, Sec. 229).

Safekeeping of transmitted election returns

The BOC shall keep the ballot boxes containing the election returns in a safe and secure room before and after the canvass.

Poll watchers

Every registered political party or coalition of political parties, and every candidate shall each be entitled to one watcher in every polling place and canvassing center; *Provided*, candidates for the Sangguniang Panlalawigan, Sangguniang Panlungsod, or Sangguniang Bayan belonging to the same slate or ticket shall collectively be entitled to only one watcher.

There shall also be recognized six principal watchers, representing the six accredited major political parties excluding the dominant majority and minority parties, who shall be designated by the Commission upon nomination of the said parties [R.A. 9369, (*Election Automation Law*), Sec. 34].

Process of canvassing by the BOC

1. The BOC shall meet not later than six o'clock in the afternoon of Election Day at the place designated by the Commission to receive the election returns and to immediately canvass those that may have already been received;
2. It shall meet continuously from day to day until the canvass is completed, and may adjourn but only for the purpose of awaiting the other election returns from other polling places within its jurisdiction;
3. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy thereof, and making available the data contained therein to the mass media and other interested parties;
4. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed; and
5. The respective BOC shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of the votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay (OEC, Sec. 231).

NOTE: Failure to comply with this requirement shall constitute an election offense.

Duty of BOC on missing, lost, or destroyed election returns

1. Obtain such missing election returns from the BEI concerned;
2. If said returns have been lost or destroyed, the BOC, upon prior authority of the Commission, may use any of the authentic copies or a certified copy of said election returns issued by the Commission; and
3. Direct its representative to investigate the case and immediately report the matter to the Commission.

NOTE: The BOC, notwithstanding the fact that not all the election returns have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election (*OEC, Sec. 233*).

When integrity of ballots is violated

The Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping (*OEC, Sec. 237*).

1. *Material defects*– If it should clearly appear that some requisites in form or data had been omitted in the election returns, the BOC shall call for all the members of the BEI concerned by the most expeditious means, for the same board to effect the correction (*OEC, Sec. 234*).
2. *Omission in the election returns of the name of any candidate and/or his corresponding votes* – The BOC shall require the BEI concerned to complete the necessary data in the election returns and affix therein their initials (*OEC, Sec. 234*).
3. *Falsified or appear to be tampered with* – If the election returns submitted to the BOC appear to be tampered with, altered or falsified after they have left the hands of the BEI, or otherwise not authentic, or were prepared by the BEI under duress, force, intimidation, or prepared by persons other than the member of the BEI, the BOC shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Sec. 220 hereof (*OEC, Sec. 235*).
4. *Discrepancies* – If it appears to the BOC that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the BOC or any candidate affected and after due notice to all candidates concerned, shall:

- a. Proceed summarily to determine whether the integrity of the ballot box had been preserved; and
- b. Once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned (*OEC, Sec. 236*).

NOTE: In the abovementioned cases, the BOC shall continue the canvass of the remaining or unquestioned returns. If, after the canvass of all the said returns, it should be determined that the returns which have been set aside will affect the result of the election, no proclamation shall be made except upon orders of the Commission after due notice and hearing. Any proclamation made in violation hereof shall be null and void (*OEC, Sec. 238*).

Void proclamation

A void proclamation is no proclamation at all, and the proclaimed candidate's assumption into office cannot deprive the COMELEC of its power to annul the proclamation. A proclamation is void when it is based on incomplete returns (*Castromayor v. COMELEC, G.R. No. 120426, November 23, 1995*) or when there is no complete canvass yet (*Jamil v. COMELEC, G.R. No. 123648, December 15, 1997*).

Partial proclamation

Notwithstanding pendency of any pre-proclamation controversy, COMELEC may summarily order proclamation of winning candidates whose election will not be affected by the outcome of the controversy (*R.A. 7166, Sec. 21*).

Tie in election result

1. Two or more candidates have received an equal and highest number of votes; or
2. In cases where two or more candidates are to be elected for the same position and two or more candidates received the same number of votes for the last place in the number to be elected (*OEC, Sec. 240*).

Duty of the BOC in case of tie

The BOC, after recording this fact in its minutes, shall by resolution, upon five days notice to all the tied candidates, hold a special public meeting at which the BOC shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected the candidates who may be favored by luck. The BOC shall forthwith make a certificate stating the name of the candidate who had been



favorable by luck and his proclamation on the basis thereof (*OEC, Sec. 240*).

BOC proceedings when considered illegal

There is an illegal proceeding of the BOC when the canvassing is a sham or mere ceremony, the results of which are pre-determined and manipulated as when any of the following circumstances are present:

1. Precipitate canvassing;
2. Terrorism;
3. Lack of sufficient notice to the members of the BOC; or
4. Improper venue (*COMELEC Res. 8804, Rule 4, Sec. 2, March 22, 2010*).

Idem Sonans (1994 Bar)

The *idem sonans* rule means that a name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor. (*OEC, Sec. 211*)

REMEDIES AND JURISDICTION IN ELECTION LAW

PETITION NOT TO GIVE DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY

A verified petition seeking to deny due course to a certificate of candidacy may be filed by any person exclusively on the ground that material representation contained therein as required is false. The petition may be filed not later than 25 days from the time of filing of the certificate of candidacy, and shall be decided, after due notice and hearing, not later than 15 days before the election.

In addition, the COMELEC may *motu proprio* or upon verified petition refuse to give due course to or cancel a certificate of candidacy if show that it was filed:

1. Put the election process in mockery or disrepute;
2. Cause confusion among the voters by the similarity of the names of the registered candidates; or
3. Clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the CoC has been filed and thus prevent a faithful determination of the true will of the electorate (*OEC, Sec. 69*).

PETITION FOR DISQUALIFICATION

It is the remedy against any candidate who does not possess all the qualifications required by the

Constitution or law, or who commits any act declared by law to be grounds for disqualification (*COMELEC Rules of Procedure, Rule 25, Sec.1*).

Time of filing the petition for disqualification

The petition for disqualification may be filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation (*COMELEC Rules of Procedure, Rule 25, Sec. 3*).

Nature of the proceedings

The petition is heard summarily (*COMELEC Rules of Procedure, Rule 25, Sec. 4*). However, the COMELEC cannot disqualify a candidate without hearing and affording him opportunity to adduce evidence to support his side and taking into account such evidence.

Final and executory judgment

A decision or resolution is deemed final and executory if, in case of a division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission *en banc*, no restraining order is issued by the Supreme Court within five days from receipt of the decision or resolution (*2013 COMELEC Rules of Procedure, Rule 23, Sec. 8, as amended by COMELEC Resolution No. 9523*).

Grounds for disqualification

1. Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than 18 months or for a crime involving moral turpitude (*OEC, Sec. 12*);
2. Any candidate who, in action or protest in which he is a party, is declared by final decision guilty of or found by COMELEC of having:
 - a. Given money or other material consideration to influence, induce or corrupt the voters of public officials performing electoral functions;
 - b. Committed acts of terrorism to enhance his candidacy;
 - c. Spent in his election campaign an amount in excess of the allowed; and
 - d. Solicited, received or made any contribution prohibited under the Omnibus Election Code (*OEC, Sec. 68*).
3. Any person who is a permanent resident of or an immigrant to a foreign country, unless said person has waived his status as permanent



resident or immigrant of a foreign country (OEC, Sec. 68).

NOTE: R.A. 9225 expressly provides for the conditions before those who re-acquired Filipino citizenship may run for a public office in the Philippines.

(See earlier discussion on the grounds for disqualification under Candidacy for a longer list.)

Rules on disqualification cases

1. *Complaint filed before election* – The Commission shall determine whether the acts complained of have in fact been committed. If so, the COMELEC shall order the disqualification of the respondent candidate.
2. *Complaint not resolved before election* – COMELEC may *motu proprio* or on motion of any of the parties refer the complaint to the Law Department of the Commission.
3. *Complaint filed after election and proclamation of winner* – The complaint shall be dismissed.

NOTE: The complaint shall be referred for preliminary investigation to the Law Department.

4. *Complaint filed after election but before proclamation of winner* – The complaint shall be dismissed.

NOTE: The complaint shall be referred for preliminary investigation to the Law Department. If the Law Department makes a *prima facie* finding of guilt and the corresponding information has been filed with the trial court, the complainant may file a petition for suspension of the proclamation of the respondent.

5. *Submission of recommendation to Commission en banc* – The Law Department shall terminate the preliminary investigation within 30 days from receipt of the referral and shall submit its study, report and recommendation to the Commission *en banc* within five days from the conclusion of the preliminary investigation. If it makes a *prima facie* finding of guilt, it shall submit with such study the Information for filing with the appropriate court.

Remedy if petition for disqualification is unresolved on election day

The petitioner may file a motion with the division or Commission *en banc* where the case is pending, to suspend the proclamation of the candidate

concerned, provided that the evidence for the grounds to disqualify is strong. For this purpose, at least three days prior to any election, the Clerk of the Commission shall prepare a list of pending cases and furnish all Commissioners copies of said the list.

In the event that a candidate with an existing and pending petition to disqualify is proclaimed winner, the Commission shall continue to resolve the said petition (COMELEC Rules of Procedure, Rule 25, Sec. 5, as amended by COMELEC Resolution 9523, September 25, 2012).

Petition to deny due course to or cancel CoC vs. petition for disqualification

PETITION TO DENY DUE COURSE TO OR CANCEL CoC	PETITION FOR DISQUALIFICATION
Based on a statement of a material representation in the said certificate that is false.	Premised on Sec. 12 of OEC, or Sec. 40 of the LGC.
The person whose certificate is cancelled or denied due course under Sec. 78 is not treated as a candidate at all, as if he never filed a CoC.	A person who is disqualified under Sec. 68 is merely prohibited to continue as a candidate.
A person whose CoC has been denied due course or cancelled under Sec. 78 cannot be substituted because he is never considered as candidate.	A candidate who is disqualified under Sec. 68 can be validly substituted under Sec. 77 of the OEC because he remains a candidate until disqualified.

PETITION TO DECLARE FAILURE OF ELECTIONS

Grounds for failure of elections

Failure of elections may be declared in the following cases:

1. The election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud, or other analogous causes;
2. The election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud, or other analogous causes; and
3. After the voting and during the preparation and transmission of the election returns or canvass thereof such election results in failure to elect on account of *force majeure*, violence, fraud or



analogous causes (*Banaga Jr. v. COMELEC, G.R. No. 134696, July 31, 2000*).

NOTE: There is failure of elections only when the will of the electorate has been muted and cannot be ascertained (*Benito v. COMELEC, G.R. No. 134913, Jan. 19, 2001*).

Requisites for declaration of failure of elections

The following requisites must concur:

1. No voting has taken place in the precincts concerned on the date fixed by law, or even if there was voting, the election nonetheless resulted in a failure to elect; and
2. The votes cast would affect the results of the election.

Power to declare a failure of election

The COMELEC *en banc* has the original and exclusive jurisdiction to hear and decide petitions for declaration of failure of election or for annulment of election results (*R.A. 7166, Sec. 4*).

Failure of Elections vs. Postponement of Elections

FAILURE OF ELECTIONS	POSTPONEMENT OF ELECTIONS
Any serious cause of:	
a. Force Majeure	
b. Violence	
c. Terrorism	
d. Loss or destruction of election paraphernalia	
e. Other analogous cases	
Definition	
Failure to elect and affect results of elections.	Serious impossibility to have free and orderly elections.
As to when the grounds must exist	
Grounds may occur any time before proclamation.	Grounds must exist before voting.
As to procedure	
1. Verified petition by any interested person	1. Verified petition by any interested person or <i>motu proprio</i> by COMELEC <i>en banc</i>
2. Due Notice; and	2. Due notice; and
3. Hearing.	3. Hearing.
As to effects	

1. Declaration of Failure of elections; and	1. Election is postponed; and
2. Holding of continuation of elections reasonably close to election not held, but not later than 30 days from cessation of cause.	2. Conduct elections reasonably close to elections not held, but not later than 30 days from cessation of cause.

Q: Ted and Barney both ran for the position of representative of the first district of Northern Samar. Ted won while Barney placed second. Barney filed an election protest before the HRET against Ted, alleging terrorism committed by the supporters of Ted before, during, and after the elections. Barney prayed for the annulment of Ted's election. Ted argued that HRET has no jurisdiction over the protest on the premise that annulment of election returns on the ground of terrorism is akin to a declaration of failure of elections which is under the exclusive jurisdiction of COMELEC. Is Ted correct?

A: NO. The power of the HRET to annul elections differs from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the **issue of fraud, terrorism or other irregularities committed before, during or after the elections**. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. Consequently, the annulment of election results is but a power concomitant to the HRET's constitutional mandate to determine the validity of the contestee's title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. Thus, the HRET, as the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, may annul election results if in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment. Because in doing so, it is merely exercising its constitutional duty to ascertain who among the candidates received the majority of the valid votes cast (*Abayon v. HRET, G.R. No. 223032, May 3, 2016*).

PRE-PROCLAMATION CONTROVERSY

Pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the BoC, which may be raised by any candidate or by any registered political party or coalition of political parties, or by any accredited and participating party list group, before the Board or directly with the COMELEC (*COMELEC Resolution No. 8804, Rule 3, Sec. 1*).

Purpose

To ascertain winners in the elections on basis of election returns duly authenticated by BEI and admitted by the BOC (*Abella v. Larrazabal, G.R. No. 87721-30, December 21, 1989*).

Q: Sao was an official candidate for Municipal Mayor. Que ran for the same position. Sao alleged to have witnessed an anomalous activity that affected the integrity of several election returns (ER). During the canvassing, Sao sought for the exclusion of the contested ERs on the grounds of massive fraud, illegal proceedings, tampered/falsified and obviously manufactured returns. He alleged that the oral objections were timely made, and the written petition for Petition for Exclusion was filed with the Municipal Board of Canvassers (MBOC). Were the allegations raised by Sao on the contested ERs proper in a pre-proclamation controversy?

A: NO. The unsubstantiated issues raised by Sao were not proper for a pre-proclamation controversy. Pre-proclamation controversy is summary in character which must be promptly decided. Hence, the Board of Canvassers (BOC) will not look into allegations of irregularity that are not apparent on the face of ERs that appear otherwise authentic and duly accomplished. The Court found that there is absolutely no indication that the contested ERs were falsified or tampered with. Claims that contested ERs are obviously manufactured or falsified must be evident from the face of the said documents. As such, there was no valid ground to delay the proclamation, since the unsubstantiated issues raised by Sao were not proper for a pre-proclamation controversy. (*Sao v. COMELEC, G.R. No. 182221, February 2, 2010*)

Jurisdiction

COMELEC has exclusive jurisdiction over pre-proclamation cases. It may order, *motu proprio* or upon written petition, and after due notice and hearing the partial or total suspension of the proclamation of any candidate-elect or annul

partially or totally any proclamation, if one has been made, as the evidence shall warrant (*OEC, Sec. 242*).

Nature and execution of judgment

It shall be heard summarily by the COMELEC. Its decision shall be executory after five days from receipt by the losing party, unless otherwise ordered.

When not allowed (2008 Bar)

1. For the positions of President, Vice President, Senator and Member of House of Representatives (*R.A. 7166, Sec. 15*); and

XPNS:

- a. Correction of manifest errors;
- b. Questions affecting the composition or proceedings of the Board of Canvassers (*COMELEC Res. No. 8804, March 22, 2010, Rule 3, Sec. 1*); and

NOTE: However, this does not preclude the authority of the appropriate canvassing body, *motu proprio* or upon written complaint of an interested person, to correct manifest errors in the certificate of canvass or election before it (*R.A. 9369, Sec. 38*).

- c. Determination of the authenticity and due execution of certificates of canvass as provided in Sec. 30 of RA 7166, as amended by RA 9369.

2. No pre-proclamation cases are allowed in case of *barangay* election (*R.A. 6679, Sec. 9*).

Issues that may be raised (1996 Bar)

1. Illegal composition or proceedings of the board of election canvassers;
2. Canvassed election returns are either:
 - a. Incomplete;
 - b. Contain material defects;
 - c. Appear to be tampered with or falsified; or
 - d. Contain discrepancies in the same returns or in authentic copies;
3. The election returns were:
 - a. Prepared under duress, threats, coercion, intimidation; or
 - b. Obviously manufactured or not authentic;
4. Substituted or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate(s); or
5. Manifest errors in the Certificates of Canvass or Election Returns (*R.A. 7166, Sec. 15; Chavez v. COMELEC, G.R. No. 16277, August 31, 2004*).



NOTE: The enumeration is restrictive and exclusive. (*Suhuri v. Commission on Elections, G.R. No. 181869, October 2, 2009*).

Issues that cannot be raised

1. Appreciation of ballots, as this is performed by the BEI at the precinct level and is not part of the proceedings of the BOC (*Sanchez v. COMELEC, G.R. No. 78461, August 12, 1987*);
2. Technical examination of the signatures and thumb marks of voters (*Matalam v. COMELEC, G.R. No. 123230, April 18, 1997*);
3. Prayer for re-opening of ballot boxes (*Alfonso v. COMELEC, G.R. No. 107847, June 2, 1994*);
4. That the padding of the List of Voters may constitute fraud, or that the BEI may have fraudulently conspired in its preparation; vote-buying and terrorism (*Ututalum v. COMELEC, G.R. No. 84843-44, January 22, 1990*);
5. Challenges directed against the BEI (*Ututalum v. COMELEC, G.R. No. 84843-44, January 22, 1990*); and
6. Fraud, terrorism and other illegal electoral practices. These are properly within the office of election contests over which electoral tribunals have sole, exclusive jurisdiction (*Loong v. COMELEC, G.R. No. 93986, December 22, 1992*).

Effect of filing of pre-proclamation controversy

1. The period to file an election contest shall be suspended during the pendency of the pre-proclamation contest in the COMELEC or the Supreme Court;
2. The right of the prevailing party in the pre-proclamation contest to the execution of COMELEC's decision does not bar the losing party from filing an election contest; and
3. Despite the pendency of a pre-proclamation contest, the COMELEC may order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.

Termination of pre-proclamation cases

GR: Pre-proclamation cases are terminated at the beginning of term of the officers (*R.A. 7166, Sec. 16*).

XPNS:

1. When based on evidence, COMELEC determines that petition is meritorious;
2. The SC in a petition for *certiorari* issues a contrary order; or
3. The case is not a pre-proclamation case (*Peñaflorida v. COMELEC, G.R. No. 125950, November 18, 1997*).

Q: Is the COMELEC precluded from exercising powers over pre proclamation controversies, when the Electoral Tribunal acquires jurisdiction?

A:

GR: YES. COMELEC is precluded from exercising powers over pre-proclamation controversies when the Electoral Tribunal acquires jurisdiction.

XPNS:

1. BOC was improperly constituted;
2. Proclamation was null and void;
3. *Quo warranto* is not the proper remedy;
4. What was filed was a petition to annul a proclamation, and not a *quo warranto* or election protest; and
5. Election contest expressly made without prejudice to pre-proclamation controversy or it was made *ad cautelam*.

Petition to annul or suspend the proclamation

It is a remedy where there is a manifest error on the face of the transmitted returns or variance of results from the election returns and CoC, and a winning candidate is about to be, or has already been proclaimed on the basis thereof.

The COMELEC is required to hear the petition immediately and the ballots may be ordered to be manually recounted to verify the manifest errors or alleged variance.

NOTE: The filing of a petition to annul or suspend the proclamation shall suspend the running of the period within which to file an election protest or *quo warranto* proceedings.

ELECTION PROTEST

Post-election disputes

These are disputes which arise or are instituted after proclamation of winning candidates and which issues pertain to the casting and counting of votes (election protests), or to the eligibility or disloyalty of the winning candidates (*quo warranto*).

Nature and purpose of an election contest

It is a special summary proceeding the object of which is to expedite the settlement of controversies between candidates as to who received the majority of legal votes.



NOTE: Statutes providing for election contests are to be *liberally construed* to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action (*Vialogo v. COMELEC*, G.R. No. 194143, October 4, 2011).

Where election protests can be filed

1. *COMELEC* – It is the sole judge of all contests relating to elections, returns, and qualifications of all elective regional, provincial and city officials (reviewable by SC under Rule 64 using Rule 65);

NOTE: Decisions of COMELEC *en banc* are appealable to SC(2001 Bar).

2. *Presidential Electoral Tribunal* –Against the President and Vice President;
3. *SET* – Against a senator;
4. *HRET* –Against a representative;
5. *RTC* – Over contests for municipal officials which may be appealed to COMELEC; and
6. *MeTC or MTC* – For barangay officials which may be appealed to COMELEC.

Grounds for the filing of election protests

1. Fraud;
2. Vote-buying;
3. Terrorism;
4. Presence of flying voters;
5. Misreading or misappreciation of ballots;
6. Disenfranchisement of voters;
7. Unqualified members of board of election inspector; and
8. Other election irregularities.

NOTE: Pendency of election protest is not sufficient basis to enjoin the protestee from assuming office.

Content of an election protest

It must be initiated by filing a protest that must contain the following allegations:

1. The protestant is a candidate who duly filed a COC and was voted for in the election;
2. The protestee has been proclaimed; and
3. The petition was filed within ten (10) days after the proclamation (*Miro v. COMELEC*, G.R. No. L-57574, April 20, 1983).

Effect if the protestant accepts a permanent appointment

Acceptance of a permanent appointment to a regular office during the pendency of his protest is an abandonment of the electoral protest. The same is true if a protestant voluntarily sought election to an office whose term would extend beyond the expiry date of the term of the contested office, and after winning the said election, took her oath and assumed office and there after continuously serves it. The reason for this is that the dismissal of the protest would serve public interest as it would dissipate the aura of uncertainty as to the results of the presidential election, thereby enhancing the all-to crucial political stability of the nation during this period of national recovery (*Santiago v. Ramos*, P.E.T. Case No. 001, February 13, 1996).

In assuming the office of Senator, one has effectively abandoned or withdrawn this protest. Such abandonment or withdrawal operates to render moot the instant protest. Moreover, the dismissal of this protest would serve public interest as it would dissipate the aura of uncertainty as to the results of the election(*Legarda v. De Castro*, PET case no. 003, January 18, 2008).

Requisites for an execution pending appeal in election protest cases

1. It must be upon motion by the prevailing party with notice to the adverse party;
2. There must be good reasons for the said execution; and
3. The order granting the said execution must state the good reasons (*Navarosa v. COMELEC*, G.R. No. 157957, September 18, 2003).

“Good reasons”

A combination of two or more of the following:

1. That public interest is involved or the will of the electorate;
2. The shortness of the remaining portion of the term of the contested office; or
3. The length of time that the election contest has been pending (*Ramas v. COMELEC*, G.R. No. 130831. February 10, 1998).

NOTE: If instead of issuing a preliminary injunction in place of a TRO, a court opts to decide the case on its merits with the result that it also enjoins the same acts covered by its TRO, it stands to reason that the decision amounts to a grant of preliminary injunction. Such injunction should be deemed in force pending any appeal from the decision. The view that execution pending appeal should still continue notwithstanding a decision of the higher



court enjoining such execution—does not make sense. It will render quite inutile the proceedings before such court (*Panlilio v. COMELEC*, G.R. No. 184286, February 26, 2010).

Best pieces of evidence in an election contest

1. Ballots are the best and most conclusive evidence in an election contest where the correctness of the number of votes of each candidate is involved (*Delos Reyes*, G.R. No. 170070, February 28, 2007); and
2. Election returns are the best evidence when the ballots are lost, destroyed, tampered or fake.

Right to withdraw

A protestant has the right to withdraw his protest or drop polling places from his protest. The protestee, in such cases, has no cause to complain because the withdrawal is the exclusive prerogative of the protestant.

QUO WARRANTO

Quo warranto proceeding for an elective office (2012 Bar)

Quo warrant refers to an election contest relating to the qualifications of an elective official on the **ground of (1) ineligibility or (2) disloyalty to the Republic of the Philippines**. The issue is whether respondent possesses all the qualifications and none of the disqualifications prescribed by law. (*A.M. No. 07-4-15-SC*, May 15, 2007)

Jurisdiction

NOTE: Quo warranto proceedings against a Congressman-elect, Senator-elect, President-elect and VP-elect are brought before the appropriate electoral tribunals created by the Constitution.

Quo warranto proceedings against any regional, provincial or city officials are brought before the COMELEC.

Quo warranto proceedings against municipal officials and barangay officials are brought before the RTCs and MTCs respectively.

Election protest vs. Quo warranto case under the OEC (2001, 2006 Bar)

BASIS	ELECTION PROTEST	QUO WARRANTO (2009 Bar)
<i>Who may file</i>	By a losing candidate for the same office for which the winner filed his COC.	By any voter who is a registered voter in the constituency where the winning

		candidate sought to be disqualified ran for office.
<i>Issue/s</i>	Who received the majority or plurality of the votes which were legally cast? Whether there were irregularities in the conduct of the election which affected its results.	Whether the candidate who was proclaimed and elected should be disqualified because of ineligibility or disloyalty to the Philippines.

Effect of filing an election protest or a petition for quo warranto

Generally, it bars the subsequent filing of a pre-proclamation controversy or a petition to annul proclamation. It also amounts to the abandonment of one filed earlier, thus, depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. Once the competent tribunal has acquired jurisdiction over an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding (*Villamor v. COMELEC*, G.R. No. 169865, July 21, 2006).

Q: In March 2013, COMELEC First Division issued a resolution cancelling Jeninah's CoC on the ground that she is not a citizen of the Philippines because of her failure to comply with the requirements of the Citizenship Retention and Re-acquisition Act of 2003. On April 8, 2013, Jeninah filed an MR claiming that she is a natural-born Filipino citizen, but it was denied by COMELEC on May 14 for lack of merit and declared it final and executory. Jeninah, however, was proclaimed the winner of the May 2013 elections, and took her oath of office but is yet to assume office on June 30, 2013. Jeninah contends that COMELEC lost jurisdiction pursuant to Sec. 17, Art. 6 of the 1987 Constitution which states that HRET has the exclusive jurisdiction to be the "sole judge of all contests relating to the election, returns and qualifications" of the Members of the HOR. Is the contention of Jeninah correct?

A: NO. The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the HOR, the COMELEC's jurisdiction over election contests



relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. Here, Jeninah, the winning candidate cannot be considered a Member of the HOR because, primarily, he has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the HOR begins only "at noon on the 30th day of June next following their election." Thus, until such time, the COMELEC retains jurisdiction (*Reyes v. COMELEC*, G.R. No. 207264, June 25, 2013).

PROSECUTION OF ELECTION OFFENSES

Authority to prosecute election offenses

DOJ and COMELEC exercise concurrent jurisdiction in conducting preliminary investigation of election offenses. The grant of exclusive power to investigate and prosecute cases of election offenses to the COMELEC was not by virtue of the Constitution but by the OEC which was eventually amended by Sec. 43 of R.A. 9369. Thus, the DOJ now conducts preliminary investigation of election offenses concurrently with the COMELEC and no longer as mere deputies (*Jose Miguel T. Arroyo v. DOJ, et al.*, G.R. No. 199082, September 18, 2012).

Prosecution of election offenses

Election offenses are prohibited acts such as:

1. Vote buying and vote selling (**1991 Bar**);
2. Conspiracy to bribe voters;
3. Wagering upon result of election;
4. Coercion of subordinates;

NOTE: Coercion of subordinates as an election offense [*OEC, Sec. 261(d)*] has been expressly repealed by R.A. 7890, Sec. 2 and the express repeal has been affirmed by SC in *Javier v. COMELEC*, G.R. No. 215847, January 12, 2016.

5. Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion;
6. Coercion of election officials and employees;
7. Appointment of new employees, creation of new position, promotion, giving of salary increases;
8. Intervention of public officers and employees;
9. Undue influence;
10. Unlawful electioneering;
11. Carrying firearms outside the residence or place of business; and
12. Used of armored land, water or aircraft (*OEC, Sec. 261*).

Prescriptive period of election offenses

Five years from the date of their commission (*OEC, Sec. 267*).

Jurisdiction to investigate and prosecute election offenses

According to Sec. 2(6), Article IX-C of the 1987 Constitution, the COMELEC has jurisdiction to investigate and prosecute cases involving violations of election laws, but it may delegate the power to the provincial prosecutor (*People v. Judge Basilia, G.R. Nos. 83938-40, November 6, 1989*). The COMELEC shall, through its duly authorized legal officers, have the power, concurrent with the other prosecuting arms of the government, to conduct preliminary investigation of all election offenses punishable under this Code, and prosecute the same (*R.A. 9369, Sec. 43*).

Jurisdiction to try and decide violation of election laws

GR: The RTC has the exclusive and original jurisdiction to hear and decide any criminal action or proceedings for violation of the OEC.

XPN: The MTC has jurisdiction over offenses relating to failure to register or failure to vote (*OEC, Sec 267*).

ELECTION AUTOMATION LAW (R.A. 8436, AS AMENDED BY R.A. 9369)

Automated Election System (AES)

A system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election results, and other electoral processes [*R.A. 9369, Sec. 2(1)*].

Equipment to be used in AES subject to public testing

COMELEC shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test the equipment or device to be used in the voting and counting before voting starts. Test ballots and test forms shall be provided by the Commission (*R.A. 9369, Sec. 12*).

Voter Verification Paper Audit Trail (VVPAT) or Voter's Receipt

A mechanism that allows the voter to verify his or her choice of candidates will ensure a free, orderly, honest, peaceful, credible, and informed election. The voter is not left to wonder if the machine correctly appreciated his or her ballot. The voter must know that his or her sovereign will, with respect to the national and local leadership, was properly recorded by the vote counting machines.



The minimum functional capabilities enumerated under Sec 6 of R.A. 8436, as amended, are mandatory. These functions constitute the most basic safeguards to ensure the transparency, credibility, fairness and accuracy of the upcoming elections.

The law is clear. A “voter verified paper audit trail” requires the following:

1. Individual voters can verify whether the machines have been able to count their votes; and
2. That the verification at minimum should be paper based.

There appears to be no room for further interpretation of a “voter verified paper audit trail.” The paper audit trail cannot be considered the physical ballot, because there may be instances where the machine may translate the ballot differently, or the voter inadvertently spoils his or her ballot.

The VVPAT ensures that the candidates selected by the voter in his or her ballot are the candidates voted upon and recorded by the vote-counting machine. The voter himself or herself verifies the accuracy of the vote. In instances of Random Manual Audit, and election protests, the VVPAT becomes the best source of raw data for votes (*Bagumbayan-VNP Movement and Richard J. Gordon v. COMELEC, G.R. No. 222731, March 8, 2016*).

LAW ON PUBLIC OFFICERS

GENERAL PRINCIPLES

Public office

It is the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public (*Fernandez v. Sto. Tomas, G.R. No. 116418, March 7, 1995*).

The individual so invested is a public officer (*Laurel v. Desierto, G.R. No. 145368, April 12, 2002*).

Purpose of a public office

A public office is created to effect the end for which government has been instituted which is the common good; not profit, honor, or private interest of any person, family or class of persons (*63C Am. Jur. 2d Public Officers and Employees 667 [1997]*).

Characteristics of public office (P³VN)

1. *It is a Public trust* – The principle of “public office is a public trust” means that the officer holds the public office in trust for the benefit of the people—to whom such officers are required to be accountable at all times, and to serve with utmost responsibility, loyalty, and efficiency, act with patriotism and justice, and lead modest lives (*1987 Constitution, Art. XI, Sec. 1*).

NOTE:Public service demands the highest level of honesty and transparency from its officers and employees. xxx Public office is a public trust; it must be treated as a privilege rather than a right, and rest firmly upon one's sense of service rather than entitlement (*De Castro v. Field Investigation Office, Office of the Ombudsman, G.R. No. 192723, June 5, 2017*).

2. *It is not a Property* – The concept “public office is not a property” means that it is outside the commerce of man; hence, it cannot be the subject of a contract. (*Santos v. Secretary of Labor, G.R. No. L-21624, February 27, 1968*).
3. *It is personal to the Public officer* – It is not a property transmissible to the heirs of the public officer upon the latter's death (*Santos v. Secretary of Labor, G.R. No. L-21624, February 27, 1968*).
4. *It is not a Vested right*.

NOTE: However, right to a public office is nevertheless a protected right. With the exception of constitutional offices that provide for some immunity as regards salary and tenure, right to a public office is protected by the constitutional provision on security of tenure. It cannot be taken from its incumbent without due process (*Morfe v. Mutuc, G.R. No. L-20387, January 31, 1968; Aparri v. CA, G.R. No. L-30057, January. 31, 1984*).

5. *It is not a Natural right* – Under our political system, the right to hold public office exists only because and by virtue of some law expressly or impliedly creating and conferring it.

Elements of a public office (CALIC)

1. Created by Constitution or by law or by some body or agency to which the power to create the office has been delegated;
2. Invested with Authority to exercise some portion of the sovereign power of the State;
3. The powers conferred and the duties to be discharged must be defined directly or impliedly by the Legislature or through legislative authority;
4. Duties are performed Independently without control unless those of a subordinate; and
5. Continuing and permanent (*Fernandez v. Sto. Tomas, G.R. No. 116418, March 7, 1995; Tejada v. Domingo, G.R. No. 91860, January 13, 1992*).

Public office vs. Public contract

BASIS	PUBLIC OFFICE	PUBLIC CONTRACT
<i>As to creation</i>	Incident of sovereignty.	Originates from the will of the contracting parties, subject to the limitations imposed by law.
<i>As to persons affected</i>	Has for its object the carrying out of sovereign as well as governmental functions affecting even	Imposes obligations only upon persons who entered the same.



	persons not bound by contract.	
As to subject matter and scope	Embraces the idea of tenure, duration, and continuity. The duties connected therewith are generally continuing and permanent.	Is almost always limited in its duration and specific in its objects. Its terms define and limit the rights and obligations of the parties, and neither may depart therefrom without the consent of the other.

Public officer

The public officer, generally, is the one who holds a "public office." A public officer is such an officer as is required by law to be elected or appointed, who has a designation or title given to him by law, and who exercise functions concerning the public, assigned to him by law.

Under the Revised Penal Code, Art. 203

Any person who, **by direct provision of law**, popular election or appointment by competent authority, shall take part in the performance of public functions in the government of the Philippine Islands, or shall perform in said Government or in any of its branches, public duties as an employee, agent, or subordinate official, of any rank or class (*RPC, Art. 203*).

Under RA 3019: The Anti-Graft and Corrupt Practices Act, Section 2(b)

The term public officer includes elective and appointive officials and employees, permanent or temporary, whether in the classified, unclassified or exempt service, receiving compensation, even nominal, from the government.

Kinds of a public officer

1. *As to creation*
 - a. Constitutional; or
 - b. Statutory.
2. *As to nature of functions*
 - a. Civil; or
 - b. Military.
3. *As to the branch of Government to which it belongs*

- a. Legislative;
- b. Executive; or
- c. Judicial.
4. *As to the branch of Government served*
 - a. National; or
 - b. Local.
5. *As to exercise of judgment*
 - a. Quasi-Judicial/Discretionary; or
 - b. Ministerial.
6. *As to compensation*
 - a. Lucrative, office of profit, or office coupled with an interest; or
 - b. Honorary.
7. *As to legality of title to office*
 - a. De facto; or
 - b. De jure.

Kinds of Government Employment

CAREER SERVICE	NON-CAREER SERVICE
Entrance is based on merits and fitness, which is determined by competitive examination (except for non-competitive positions) or based on highly technical qualifications.	Entrance is based on qualifications other than merit and fitness.

MODES OF ACQUIRING TITLE TO PUBLIC

Modes of filling up public offices

1. Appointment;
2. Election;
3. Designation – It is the mere imposition of new or additional duties upon an officer to be performed by him in a special manner; or
4. In some instances by contract or by some other modes authorized by law (*Preclaro v. Sandiganbayan, G.R. No. 111091, Aug. 21, 1995*)
 - a. Succession by operation of law; or
 - b. By direct provisions of law.

MODES AND KINDS OF APPOINTMENT

Appointment

It is the act of designation by the executive officer, board, or body to whom that power has been delegated, the individual who is to exercise the powers and functions of a given office. In this sense, it is to be distinguished from the selection or designation by a popular vote (*Borromeo v. Mariano, G.R. No. L-16808, January 3, 1921*).



It refers to the nomination or designation of an individual to an office (*Borromeo v. Mariano, ibid.*).

It is, in law, equivalent to "filling a vacancy" (*Conde v. National Tobacco Corp., G.R. No. L-11985, January 28, 1961*).

NOTE: It is a basic precept in the law of public officers that no person, no matter how qualified and eligible he is for a certain position may be appointed to an office which is not vacant. There can be no appointment to a non-vacant position. The incumbent must first be legally removed, or his appointment validly terminated before one could be validly installed to succeed him (*Garces v. Court of Appeals, G.R. No. 114795, July 17, 1996*).

Nature of appointment

Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide (*Luego v. CSC, G.R. No. L-69137, August 5, 1986*).

Appointment vs. Designation

APPOINTMENT	DESIGNATION
It is the selection by the proper authority of an individual who is to exercise the functions of a given office.	It merely connotes the imposition of additional duties, usually by law, upon a person who is already in public service by virtue of an earlier appointment or election.
It connotes permanence.	It implies temporariness and therefore does not confer upon the designee security of tenure.

Appointing authority

1. *Inherently belongs to the people.*

It belongs to where the people have chosen to place it by their Constitution or laws (63C Am. Jur. 2d Public Officers and Employees 738, 1997).

2. *Entrusted to designated elected and appointed public officials.*

The appointment of public officials is generally looked upon as properly belonging to the executive department. Appointments may also

be made by Congress or the courts, but when so made should be taken as an incident to the discharge of functions within their respective spheres [(*Government v. Springer, 50 Phil. 259, affirmed in Springer v. Government, 277 U.S. 189, 72 Ed. 845, 48 S.C.T. 480 (1928)*)].

NOTE: The general rule is that the appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing the concurrence of the Commission of Appointments and from the exercise of the limited power to prescribe the qualifications or disqualifications to a given appointive office (*Rafael v. Embroidery and Apparel Control and Inspections Board, G.R. No. L-19978, September 29, 1967*).

Where the law is silent as to who is the appointing authority, it is understood to be the President of the Philippines (*Rufino v. Endriga, G.R. No. 139554, July 21, 2006*).

Absent any contrary statutory provision, the power to appoint carries with it the power to remove or discipline (*Aguirre, Jr. v. De Castro, G.R. No. 127631, December 17, 1999*).

NOTE: Under Sec. 16, Art. VII of the 1987 Constitution, the President appoints four groups of officers.

1. First group - Heads of the Executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers;

NOTE: Appointments are vested in the President by the Constitution and with the consent of the Commission on Appointments.

2. Second group - Those whom the President may be authorized by law to appoint without the consent of the Commission on Appointments;
3. Third group - Refers to all other officers of the Government whose appointments are not otherwise provided by law (the law is silent or if the law authorizing the head of a department, agency, commission, or board to appoint is declared unconstitutional) and without the consent of the Commission on Appointments; and
4. Fourth group - Lower-ranked officers whose appointments Congress may by law vest in the heads of departments, agencies, commissions, or boards.



Appointee's acceptance of office

GR: An appointee's acceptance of office is not necessary to complete or to make the appointment valid where there is no provision of law to the contrary.

XPN: Acceptance, however, is necessary to enable the appointee to have full possession, enjoyment, and responsibility of an office (*Borromeo v Mariano*, G.R. No. L-16808, January 3, 1921; *Lacson v. Romero*, G.R. No. L-3081, October 14, 1949).

NOTE: An appointee cannot impose his own conditions for the acceptance of a public office. He may only either accept or decline it (*De Leon*, 2014).

The following elements should always concur in the making of a valid (which should be understood as both complete and effective) appointment:

1. Authority to appoint and evidence of the exercise of the authority;
2. Transmittal of the appointment paper and evidence of the transmittal;
3. A vacant position at the time of appointment; and
4. Receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications.

The concurrence of all these elements should always apply, regardless of when the appointment is made, whether outside, just before, or during the appointment ban. These steps in the appointment process should always concur and operate as a single process. There is no valid appointment if the process lacks even one step (*Velicaria-Garafil v. Office Of The President*, G.R. No. 203372, June 16, 2015).

Procedure for the appointment of those that require confirmation by the Commission on Appointments

1. Nomination by the President;
2. Confirmation by the Commission on Appointments;
3. Issuance of commission; and
4. Acceptance by the appointee.

NOTE: Appointment is deemed complete upon acceptance. Pending such acceptance, which is optional on the part of the appointee, the appointment may still be validly withdrawn.

GR: Appointment to a public office cannot be forced upon any citizen.

XPN: If it is for purposes of defense of the State under Sec. 4, Art. 2 (also an XPN to the rule against involuntary servitude). (*Lacson v. Romero*, No. L-3081, Oct. 14, 1949).

NOTE:

- In *ad interim* appointments, steps 1, 3 and 4 precede step 2.
- For appointments which do not require confirmation, step 2 is skipped.

Kinds of Appointments

1. *Permanent* – An appointment in the civil service issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof. It lasts until lawfully terminated, thus, enjoys security of tenure [*P.D. 807 (Civil Service Decree)*, Sec. 25(a)].
2. *Temporary* – A kind of appointment issued to a person who meets all the requirements for the position to which he is being appointed, except the appropriate civil service eligibility, in the absence of appropriate eligibilities and it becomes necessary in the public interest to fill a vacancy [*P.D. 807*, Sec. 25(b)].

NOTE: That such temporary appointment shall not exceed 12 months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available [*P.D. 807*, Sec. 25(b)].

One who holds a temporary or acting appointment has no fixed tenure of office, and, therefore, his enjoyment can be terminated at the pleasure of the appointing power even without hearing or cause (*Erasmio v. Home Insurance & Guaranty Corporation*, G.R. No. 139251, August 29, 2002).

However, if the appointment is for a specific period, the appointment may not be revoked until the expiration of the term.

NOTE: Acquisition of civil service eligibility will not automatically convert the temporary appointment into a permanent one (*Prov. Of Camarines Sur v. CA*, G.R. No. 104639, July 14, 1995).

3. *Provisional appointment* – One which may be issued, upon the prior authorization of the Commissioner of the CSC, to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs



LAW ON PUBLIC OFFICERS

and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment (*Jimenea v. Guanzon, G.R. No. L-24795, January 29, 1968*).

Temporary Appointment vs. Provisional Appointment

TEMPORARY APPOINTMENT	PROVISIONAL APPOINTMENT
Issued to a person to a position needed only for a limited period.	Issued prior to authorization of CSC.
Not to exceed 12 months/no definite tenure and is dependent on the pleasure of the appointing power.	Regular position in the meantime that no person qualifies for the position.
Meets all requirements for position except civil service eligibility.	Has not qualified in an appropriate examination but otherwise meets requirements for appointments.

NOTE: Provisional appointments in general have already been abolished by R.A. 6040. It still, however, applies with regard to teachers under the Magna Carta for Public School Teachers.

4. *Regular appointment* – One made by the President while Congress is in session, which takes effect only after confirmation by the Commission on Appointment and, once approved, continues until the end of the term of the appointee.
5. *Ad interim appointment*– One made by the President while Congress is not in session, which takes effect immediately, but ceases to be valid if:
 - a. Disapproved by the Commission on Appointments; or
 - b. Upon the next adjournment of Congress, either in regular or special session, if the CA has not acted upon it. **(1990, 1994 Bar)**

Difference between Regular appointment, Ad interim appointment, Temporary appointment and Designation

REGULAR	AD INTERIM	TEMPO-RARY or ACTING	DESIGNATION
Made when Congress is in session.	Made when Congress is NOT in session.	Lasts until a perm-anent appointment is issued.	Mere imposition of new or additional duties to be performed by an officer in a special manner while he performs the function of his permanent office.
Made only after the nomination is confirmed by CA.	Made before confirmation of the CA.	Cannot be validly confirmed by the CA because there was no valid nomination.	The officer is already in service by virtue of an earlier appointment performing other functions.
Continues until the expira-tion of the term.	Shall cease to be valid if dis-app- roved by CA or upon the next adjourn-ment of Congress.	May be terminated at the pleasure of appointing power without hearing or cause.	Maybe terminated anytime.

Acting Appointment (2003 Bar)

An acting appointment is merely temporary (*Sevilla v. CA, G.R. No. 88498, June 9, 1992*). A temporary appointment cannot become a permanent appointment, unless a new appointment, which is permanent, is made (*Marohombsar v. Alonto, G.R. No. 93711, February 25, 1991*).

However, if the acting appointment was made because of a temporary vacancy, the temporary appointee holds office until the assumption of office by the permanent appointee. In such case, the appointing authority cannot use the acting appointment as a justification in order to evade or avoid the security of tenure principle provided for under the Constitution and the Civil Service Law (*Gayatao v. CSC, G.R. No. 93064, June 22, 1992*).



Q: Can the CSC revoke an appointment by the appointing power and direct the appointment of an individual of its choice?

A: NO. The CSC cannot dictate to the appointing power whom to appoint. Its function is limited to determining whether or not the appointee meets the minimum qualification requirements prescribed for the position. Otherwise, it would be encroaching upon the discretion of the appointing power (*Medalla v. Sto. Tomas, G.R. 94255, May 5, 1992*).

Protest to appointment

Any person who feels aggrieved by the appointment may file an administrative protest against such appointment. Protests are decided in the first instance by the Department Head, subject to appeal to the CSC.

The protest must be for a cause (*i.e. appointee is not qualified; appointee was not the next-in-rank; unsatisfactory reasons given by the appointing authority in making the questioned appointment*). The mere fact that the protestant has the more impressive resume is not a cause for opposing an appointment (*Aquino v. CSC, G.R. No. 92403, April 22, 1992*).

Revocation vs. Recall of appointment

Where an appointment requires the approval of the CSC, such appointment may be revoked or withdrawn by the appointing authority any time before the approval by the CSC.

After an appointment is completed, the CSC has the power to recall an appointment initially approved on any of the following grounds:

1. Non-compliance with procedures/criteria in merit promotion plan;
2. Failure to pass through the selection board;
3. Violation of existing collective relative agreement to promotion;
4. Violation of CSC laws, rules and regulations (*Debulgado v. CSC, G.R. No. 111471, Sept. 26, 1994*).

ELIGIBILITY AND QUALIFICATION REQUIREMENTS

Requirements for public office

1. *Eligibility* – It is the state or quality of being legally fit or qualified to be chosen.
2. *Qualification* – This refers to the act which a person, before entering upon the

performance of his duties, is by law required to do such as the taking, and often, subscribing and filing of an official oath, and, in some cases, the giving of an official bond. It may refer to:

- a. Endowments, qualities or attributes which make an individual eligible for public office *e.g. citizenship*; or
- b. The act of entering into the performance of the functions of a public office *e.g. taking oath of office*).

NOTE: To entitle a public officer to hold a public office, he must possess all the qualifications and none of the disqualifications prescribed by law for the position, not only at the time of his election or appointment but also during his incumbency.

General Qualifications for Public Office (CARESCAP)

1. **Citizenship;**

NOTE: Only natural-born Filipinos who owe total and undivided allegiance to the Republic of the Philippines could run for and hold **elective** public office (*Arnado v. COMELEC, G.R. No. 210164, August 18, 2015*).

Congress enacted R.A. 9225 allowing natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization abroad to reacquire Philippine citizenship and to enjoy full civil and political rights upon compliance with the requirements of the law. They may now run for public office in the Philippines provided that they: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath prior to or at the time of filing of their CoC (*Arnado v. COMELEC, ibid.; RA 9225, Sec. 5*).

This rule applies to all those who have reacquired their Filipino citizenship without regard as to whether they are still dual citizens or not. It is a pre-requisite imposed for the exercise of the right to run for public office (*Sobejana-Condon v. COMELEC, G.R. No. 198742, August 10, 2012*).

For **appointive** public officials, R.A. 9225 requires an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, that they renounce their oath of allegiance to the country where they took that oath [*RA 9225, Sec. 5(3)*].



2. Age;
3. Residence;
4. Education;
5. Suffrage;
6. Civil service examination;
7. Ability to read and write; and
8. Political affiliation, as a rule, is not a qualification.

XPN: Party-list, membership in the Electoral Tribunal, Commission on Appointments

NOTE: The qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualification is lost, his title may be reasonably challenged (*Frivaldo v. COMELEC*, G.R. No. 87193, June 23, 1989; *Aguila v. Genato*, G. R No. L-55151, March 17, 1981).

Authority to prescribe qualifications

Congress is generally empowered to prescribe the qualifications for holding public office, provided it does not exceed thereby its constitutional powers or impose conditions of eligibility inconsistent with constitutional provisions.

Limitation on the power of Congress to prescribe qualifications

Congress has no power to require qualifications other than those qualifications specifically set out in the Constitution. Such Constitutional criteria are exclusive.

Power of Congress to prescribe disqualifications

In the absence of constitutional inhibition, Congress has the same right to provide disqualifications as it has to provide qualifications for office.

Congress, however, may not add disqualifications where the Constitution has provided them in such a way as to indicate intention that the disqualifications provided shall embrace all which are to be permitted. Moreover, when the Constitution has attached a disqualification to the holding of any office, Congress cannot remove it under the power to prescribe qualifications as to such offices as it may create (46 C.J. 936-937).

Perfection of the right of a public officer to enter in office

Upon his oath of office, it is deemed perfected. Only when the public officer has satisfied this prerequisite can his right to enter into the position be considered complete. Until then, he has none at

all, and for as long as he has not qualified; the holdover officer is the rightful occupant (*Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999).

DISABILITIES AND INHIBITIONS OF PUBLIC OFFICERS

Disqualifications attached to civil service employees or officials

1. *Losing candidate in any election*
 - a. Cannot be appointed to any office in the government or GOCCs or their subsidiaries; and
 - b. Period of disqualification: One year after such election.

XPN: Losing candidates in barangay elections

2. *Elective officials:*

GR: They are not eligible for appointment or designation in any capacity to any public office or position during their tenure.

XPN: May hold *ex officio* positions.

E.g. The Vice President may be appointed as a Cabinet member.

3. *Appointive officials:*

GR: Cannot hold any other office in the government, or any agency or instrumentality thereof, including GOCCs and their subsidiaries.

XPN: Unless otherwise allowed by law, or by the primary functions of his position.

NOTE: The exception does not apply to Cabinet members, and those officers mentioned in Art. VII, Sec. 13. They are governed by the stricter prohibitions contained therein.

Prohibitions attached to elective and appointive officials in terms of compensation

GR: They cannot receive:

1. *Additional compensation* – An extra reward given for the same office
e.g. bonus
2. *Double compensation* – When an officer is given two sets of compensation for two different offices held concurrently by one officer.
3. *Indirect compensation*

XPN: Unless specifically authorized by law.

NOTE: "Specifically authorized" means a specific authority particularly directed to the officer or employee concerned.



Pensions and gratuities, *per diems* and allowances are not considered as additional, double, or indirect compensation (1987 Constitution Art. IX-B, Sections 7-8).

Prohibitions imposed under the Constitution against the holding of two or more positions

- A. *Members of Congress shall not:*
 1. Appear as counsel before any court, electoral tribunal, or *quasi-judicial* and other administrative bodies;
 2. Be interested in any contract with, or in any franchise, or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including GOCCs, or its subsidiary; or
 3. Intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.
- B. *The President, Vice President, Members of the Cabinet, and their deputies or assistants, unless otherwise allowed by the Constitution, shall not:*
 1. Directly or indirectly practice any other profession; or
 2. Participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including GOCCs, or its subdivisions; shall avoid conflict of interest in the conduct of their office.
- C. *Members of the Constitutional Commission shall not:*
 1. Hold any other office or employment or engage in the practice of any profession or in the active management or control of any business that may be affected by the functions of his office; or
 2. Be financially interested, directly or indirectly, in any contract with, or in any franchise, or special privilege granted by the Government, or any subdivision, agencies or instrumentalities including GOCCs, or their subsidiaries. These shall also apply to the Ombudsman and his deputies during his term.
- D. Unless otherwise allowed by law or by the primary functions of his position, *no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including GOCCs or their subsidiaries (Article IX - B, Sec. 7, 1987 Constitution; Flores v Drilon, G.R. No. 104732 June 22, 1993)*
- E. No member of the armed forces in the active service shall, at any time, be appointed or

designated in any capacity to a civilian position in the government including GOCCs or any of their subsidiaries [1987 Constitution, Article XVI, Sec. 5(4)].

Grounds for disqualification to hold public office

1. Mental or physical incapacity;
2. Misconduct or commission of a crime;
3. Impeachment;
4. Removal or suspension from office;

NOTE: Where there is no constitutional or statutory declaration of ineligibility for suspension or removal from office, the courts may not impose the disability.

5. Consecutive terms exceeding the allowable number of terms;
6. Holding more than one office (except *ex officio*)
7. Relationship with the appointing power (nepotism) **(2010 Bar)**;
8. Office newly created or the emoluments of which have been increased (forbidden office);
9. Being an elective official (*Flores v. Drilon, G.R. No. 104732, June 22, 1993*);
10. Losing candidate in the election within 1 year following the date of election (prohibitions from office, not from employment); and
XPN: Losing candidates in *barangay* elections
11. Grounds provided for under the LGC.

NOTE: The Supreme Court held that while all other appointive officials in the Civil Service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself (*Civil Liberties Union v. Executive Secretary, G.R. No. 83896, February 22, 1991*).

Prohibitions under Code of Conduct and Ethical Standards for Public Officials and Employees

1. *Prohibition against financial and material interest* - Directly or indirectly having any financial or material interest in any transaction requiring the approval of their office;
2. *Prohibition against outside employment and other activities related thereto* - Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office;
3. Engaging in the private practice of their profession; and



4. Recommending any person to any position in any private enterprise which has a regular or pending official transaction with their office.

NOTE: These prohibitions shall continue to apply for a period of one year after resignation, retirement, or separation from public office, *except* in the case of participating in any business or having financial interest in any contract with the government, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

Prohibitions against the practice of other professions under the LGC

1. Local chief executives (governors, city and municipal mayors) are prohibited from practicing their profession;
2. *Sanggunian* members may practice their profession, engage in any occupation, or teach in schools except during session hours; and
3. Doctors of medicine may practice their profession even during official hours of work in cases of emergency provided that they do not derive monetary compensation therefrom.

Q: Can the members of *Sanggunian* engage in the practice of law under the LGC?

A: GR: Yes.

XPNS:

1. Cannot appear as counsel in any civil case wherein a LGU or any office, agency or instrumentality of the government is the adverse party;
2. Cannot appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office;
3. Shall not collect any fee for their appearance in administrative proceedings involving the LGU of which he is an official; and
4. May not use property and personnel of the Government, except when defending the interest of the Government.

Other prohibitions imposed on public officers

1. Prohibition against solicitation of gifts (*R.A. 6713, Sec. 7[d]*); and

NOTE: Public officers, however, may accept the following gifts from foreign governments:

- a. Gifts of nominal value received as souvenir or mark of courtesy;

- b. Scholarship or fellowship grant or medical treatment; or
- c. Travel grants or expenses for travel outside the Philippines [*RA 6713, Sec. 7[d]*].

2. Prohibition against partisan political activities [*1987 Constitution, Art. IX(B), Sec. 2(4)*]

NOTE: *Partisan political activity* is an act designed to promote the election or defeat of a particular candidate/s to a public office. It is also known as "electioneering" (*OEC, Sec. 79*).

Officers or employees in the Civil Service including members of the Armed Forces cannot engage in such activity except to vote. They shall not use their official authority or influence to coerce the political activity of any person (*1987 Administrative Code, Book V, Title I, Subtitle A, Sec. 55*).

Officers and employees in the Civil Service can nonetheless express their views on current political issues and mention the names of the candidates they support.

Q: De Vera, a Court Stenographer deliberately and fraudulently, and for a consideration, misrepresented her ability to assist the complainant in the adoption of her niece and nephew. The Office of the Court Administrator equated those acts as Grave Misconduct and dismissed De Vera from office. Is the OCA correct?

A: YES. Section 2, Canon 1 of the Code of Conduct or Court Personnel has enjoined all court personnel from soliciting or accepting any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions. De Vera thus violated her sacred oath as a court employee to serve the Judiciary with utmost loyalty and to preserve the integrity and reputation of the Judiciary as an institution dispensing justice to all. Her violation was made worse by her committing it in exchange for easy money. She was thereby guilty of corruption. She compounded her guilt by disobeying the orders of the Court requiring her to explain herself. Under the circumstances, she committed grave misconduct which is punishable by dismissal from service. (*Galindez v. Susbilla-De Vera, A.M. No. P-13-3126, February 4, 2014*)

Public officers who may engage in partisan political activities

- a. Those holding political offices, such as the President of the Philippines, Vice President of the Philippines; Executive Secretary or



Department Secretaries and other Members of the Cabinet; all other elective officials at all levels; and those in the personal and confidential staff of the above officials; and

NOTE: It shall, however, be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

- b. National, provincial, city and municipal elective officials (*Santos v. Yatco*, G.R. No. L-16133, November 6, 1959).
3. Prohibition against engaging in strike (*Social Security System Employees Assn. v. CA*, G.R. No. 85279, July 28, 1989);
4. Restriction against engaging in the practice of law (R.A. 7160, Sec. 90);
5. Prohibition against practice of other professions (R.A. 7160, Sec. 90);
6. Restriction against engaging in private business. (*Abeto v. Garces*, A.M. No. P-88-269, December 29, 1995); and
7. Restriction against accepting certain employment [RA 6713, Sec. 7(b)].

Q: Does the election or appointment of an attorney to a government office disqualify him from engaging in the private practice of law?

A: YES. As a general rule, judges, other officials of the superior courts, of the office of the Solicitor General and of other government prosecution offices; the President; Vice-President, and members of the cabinet and their deputies or assistants; members of constitutional commissions; and civil service officers or employees whose duties and responsibilities require that their entire time be at the disposal of the government are strictly prohibited from engaging in the private practice of law (E.O. 297).

POWERS AND DUTIES OF PUBLIC OFFICERS

Sources of powers of public officers

1. Expressly conferred upon him by the Act appointing him;
2. Expressly annexed to the office by law; and
3. Attached to the office by common law as incidents to it.

NOTE: In general, the powers and duties of public officers are prescribed by the Constitution or by statute or both. Public officers have only those

powers expressly granted or necessarily implied by law. If broader powers are desirable, they must be conferred by the proper authority. They cannot merely be assumed by administrative officers, nor can they be created by the courts in the proper exercise of their judicial functions [63C Am. Jur. 2d *Public Officers and Employees* 883 (1997)].

Doctrine of Necessary Implication

All powers necessary for the effective exercise of the express powers are deemed impliedly granted (*Pimentel v. COMELEC*, G.R. No. L-53581, December 19, 1980).

Kinds of duties of public officers

MINISTERIAL	DISCRETIONARY
Discharge is imperative and it must be done by the public officer.	Public officer may do whichever way he wants provided it is in accordance with law and not in a whimsical manner.
Can be compelled by <i>mandamus</i> .	Cannot be compelled by <i>mandamus</i> except when there is grave abuse of discretion.
Can be delegated.	Cannot be delegated unless otherwise provided by law (2010 Bar) .

Doctrine of Ratification

Although the acts of a public officer may not be binding on the State because he has exercised his powers defectively, his acts may be ratified.

The doctrine does not apply where:

1. There is a want of power in the public officer to perform the original act;
2. The act was absolutely void at the time it was done;
3. If the principal himself could not have lawfully done the act; or
4. If it could not have lawfully been done by anyone.

Duties of public officers

1. Be accountable to the people;
2. Serve the people with utmost responsibility, integrity, and efficiency;



3. Act with patriotism and justice and to lead modest lives;
4. Submit a declaration under oath of his assets, liabilities, and net worth upon assumption of office and as often thereafter as may be required by law; and
5. Owe the State and the Constitution allegiance at all times.

Reasons for the imposition of the duty to disclose financial records

1. To maintain public confidence in the Government and in public officials and employees;
2. To avoid conflicts of interest from arising;
3. To deter corruption; and
4. To provide the citizens with information concerning a public officer's financial affairs and thus enable them to better judge his integrity and fitness for office.

RIGHTS OF PUBLIC OFFICERS

Rights and privileges of public officers

Right to:

1. Office;
2. Compensation/salary;
3. Appointment;
4. Vacation and sick leave;
5. Maternity leave;
6. Retirement pay;
7. Longevity pay;
8. Pension;
9. Self-organization; and
10. Protection of temporary employees.

Prohibition against diminution of salary of constitutional officers

Congress is given the power to fix the salaries of certain constitutional officers, but after it has done so, it may not reduce the salary of any of them during his term or tenure. This provision is intended to secure their independence [1987 Constitution, Art. IX (A), Sec. 3].

Extent of the right to self-organization of employees in the public service

While the Constitution recognizes the right of public employees to organize, they are prohibited from staging strikes, demonstrations, mass leaves, walk-outs, and other forms of mass action which may result to temporary cessation of work or disturbance of public service. Their right to self-organization is limited only to form unions or to associate without including the right to strike. Labor unions in the government may bargain for better

terms and conditions of employment by either petitioning the Congress for better terms and conditions, or negotiating with the appropriate government agencies for the improvement of those not fixed by law (*SSS Employees Assn. v. CA*, G.R. No. 85279, July 28, 1989).

LIABILITIES OF PUBLIC OFFICERS

GR: A public officer is not liable for injuries sustained by another due to official acts done within the scope of authority.

XPns:

1. Otherwise provided by law;
2. Statutory liability (*New Civil Code*, Articles. 27, 32, 34);
3. Presence of bad faith, malice, or negligence;

NOTE: Absent of any showing of bad faith or malice, every public official is entitled to the presumption of good faith as well as regularity in the performance or discharge of official duties (*Blaquera v. Alcala*, G.R. No. 109406, September 11, 1998).

4. Liability on contracts entered into in excess or without authority; and
5. Liability on tort if the public officer acted beyond the limits of authority and there is bad faith (*USA v. Reyes*, G.R. No. 79253, March 1, 1993).

NOTE: Ruling in *Arias v. Sandiganbayan* that heads of offices may rely to a certain extent on their subordinates is **not** automatic. As held in *Cesa v. Office of the Ombudsman*, when there are facts that point to an irregularity and the officer failed to take steps to rectify it, even tolerating it, the *Arias* doctrine is inapplicable (*Ombudsman v. de los Reyes*, G.R. No. 208976, October 13, 2014).

Three-fold responsibility/liability of public officers

1. Criminal liability;
2. Civil liability; and
3. Administrative liability.

Liabilities of ministerial officers

1. *Non-feasance* – It is the neglect to perform an act which is the officer's legal obligation to perform.
2. *Misfeasance* – The failure to observe the proper degree of care, skill, and diligence required in the performance of official duty; and
3. *Malfeasance* – It refers to the performance of an act which the officer had no legal right to



perform.

NOTE: The plaintiff must show that he has suffered an injury, and that it results from a breach of duty which the officer owed him.

Command Responsibility Doctrine

A superior officer is liable for the acts of his subordinate in the following instances:

1. He negligently or willfully employs or retains unfit or incompetent subordinates;
2. He negligently or willfully fails to require his subordinates to conform to prescribed regulations;
3. He negligently or carelessly oversees the business of the office as to give his subordinates the opportunity for default;
4. He directed, cooperated, or authorized the wrongful act; or
5. The law expressly makes him liable (*E.O. No. 292, Administrative Code of 1987, Book I, Chap. 9, Sections 38 and 39*).

Grounds for the discipline of public officers

1. Dishonesty;
2. Oppression;
3. Neglect of duty;

NOTE: Gross neglect is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. (*Office of the Court Administrator v. Guan, A.M. No. P-07-2293, July 15, 2015*)

4. Misconduct;
5. Disgraceful and immoral conduct;
6. Discourtesy in the course of official duties;
7. Inefficiency and incompetence in the performance of official duties;
8. Conviction of a crime involving moral turpitude;
9. Being notoriously undesirable;
10. Falsification of official documents;
11. Habitual drunkenness;
12. Gambling;
13. Refusal to perform official duty or render overtime service;
14. Physical or mental incapacity due to immoral or vicious habits; and
15. Willful refusal to pay just debts or willful failure to pay taxes.

Q: The Office of the Court Administrator recommends that Cesare Sales be dismissed from service in the Judiciary despite his 17 years length of service on the ground of habitual tardiness. The Report submitted shows that

Sales had always been tardy in going to the office for the months of January to September 2011. In addition, he was on several sick leaves, forced leaves, and vacation leaves. On the days he was on leave, he indicated in his DTRs "sick leave applied," "vacation leave applied" or "forced leave applied." In his comment, Sales admitted his frequent tardiness in going to the office but pleaded that he be given consideration by the Court. Should Sales be dismissed from service on the ground of habitual tardiness?

A: YES. Under CSC Memorandum Circular No. 04, s. 1991, an officer or employee shall be considered habitually tardy if he is late for work, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester, or at least two (2) consecutive months during the year. In the case of Sales, he had continuously incurred tardiness during the months of January to September 2011 for more than 10 times each month, except during the month of March when he only came in late 10 times. (*Re: Habitual tardiness of Cesare Sales, MTC Office of Clerk of Court, Manila, A.M. No. P-13-3171, January 28, 2014*)

Q: Hallasgo was the Municipal Treasurer of the Municipality of Damulog, Bukidnon and was accused before the Office of the Deputy Ombudsman for Mindanao of unauthorized withdrawal of monies of the public treasury amounting to malversation of public funds by outgoing and incumbent officials of the municipality. The Office of the Ombudsman for Mindanao determined that it could not make a complete evaluation of the issues without conducting an extensive audit. The Deputy Ombudsman for Mindanao issued a Decision finding petitioner guilty of grave misconduct. Is the petitioner correct when it contended that the CA failed to appreciate that there was no substantial evidence to warrant the meting out of the extreme penalty of dismissal from service?

A: NO. Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty. Qualified by the term "gross," it means conduct that is "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused." We find that the evidence on record demonstrates a pattern of negligence and gross misconduct on the part of the petitioner that fully satisfies the standard of substantial evidence. Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.



(Hallasgo v. Commission on Audit, G.R. No. 171340, September 11, 2009)

Q:In 1993, Macario Catipon filed an application to take the Career Service Professional Examination (CPSE), believing that the CSC still allowed applicants to substitute the length of their government service for any academic deficiency which they may have. When he passed, he was later promoted to Senior Analyst and Officer-in-Charge Branch Head of the SSS Bangued. In October 1995, he finally eliminated his deficiency of 1.5 units in Military Science.

In 2003, he was charged with Dishonesty, Falsification of Official documents, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service by the CSC-CAR for making deliberate false entries in his CSPE application. The CSC exonerated Catipon from the offense charged but found him guilty of Conduct Prejudicial to the Best Interest of Service. Catipon appealed the judgment directly to the Court of Appeals, but the petition was dismissed for violating the doctrine of administrative remedies.

1. Is the CA correct?

2. Should Catipon be exonerated of the latter offense?

A: 1. YES. It is the Civil Service Commission Proper which shall have jurisdiction over decisions of Civil Service Regional Offices. It is only the decision of the Commission Proper that may be brought to the CA on petition for review, under Section 50 of MC 19. Indeed, the administrative agency concerned is in the "best position to correct any previous error committed in its forum."

2. YES. Catipon was negligent in filling up his CSPE application form and in failing to verify beforehand the specific requirements for the CSPE examination. The claim of good faith and absence of deliberate intent or willful desire to defy or disregard the rules relative to the CSPE is not a defense as to exonerate him from the charge of conduct prejudicial to the best interest of the service; under our legal system, ignorance of the law excuses no one from compliance therewith (*Catipon Jr. vs. Japson, G.R. No. 191787, June 22, 2015*).

PREVENTIVE SUSPENSION AND BACK SALARIES

Nature of preventive suspension

Preventive suspension is not a penalty by itself; it is merely a measure of precaution so that the employee who is charged may be separated from the

scene of his alleged misfeasance while the same is being investigated, to prevent him from using his position or office to influence prospective witnesses or tamper with the records, which may be vital in the prosecution of the case against him (*Beja v. CA, G.R. No. 91749, March 31, 1992*).

It can be ordered even without a hearing because this is only preliminary step in an administrative investigation (*Alonzo v. Capulong, et al., G.R. No. 110590, May 10, 1995*).

NOTE: When a public officer is charged with violation of the Anti-Graft and Corrupt Practices Act or R.A. 3019, a pre-suspension hearing is required solely to determine the applicability of such law and for the accused be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him. This may be done through various pleadings (*Torres v. Garchitorea, G.R. No. 153666, December 27, 2002*).

Periods of preventive suspension

1. *For administrative cases:*
 - a. Civil Service Law – 90 days
 - b. Local Government Code (*R.A. 7160*)
 - i. Sec. 85: 60 days for appointive officials (suspension to be imposed by the local chief executive)
 - ii. Sec. 63: 60 or 90 days for elective officials
 - c. Ombudsman Act – six months
2. *For criminal cases:* Anti-Graft and Corrupt Practices Act (*R.A. 3019*) – 90 days by analogy (*Gonzaga v. Sandiganbayan G.R. No. 96131 September 6, 1991*).

NOTE: Service of preventive suspension will not be credited to the penalty of suspension after having been found guilty because they are of different character. If however the preventive suspension is indefinite wherein his term is about to expire and suspension is not lifted such will be considered unconstitutional for being violative of due process of law (*Layno, Sr. v. Sandiganbayan, G.R. No. L-65848, May 24, 1985*).

Preventive suspension pending investigation vs. preventive suspension pending appeal

PENDING INVESTIGATION	PENDING APPEAL
Not a penalty but only a means of enabling the disciplinary authority an unhampered investigation	Punitive in character



After the lapse of 90 days, the law provides that he be automatically reinstated	If exonerated, he should be reinstated with full pay for the period of suspension
During such preventive suspension, the employee is not entitled to payment of salaries	If during the appeal he remains suspended and the penalty imposed is only reprimand, the suspension pending appeal becomes illegal and he is entitled to back salary corresponding to the period of suspension

Q: Is a public officer entitled to back wages during his suspension pending appeal when the result of the decision from such appeal does not amount to complete exoneration but carries with it a certain number of days of suspension?

A: NO. Although entitled to reinstatement, he is not entitled to back wages during such suspension pending appeal. Only one who is completely exonerated or merely reprimanded is entitled to such back wages (*Sec. of Education v. CA. G.R. No. 128559, October 4, 2000*).

Conditions before an employee may be entitled to back salaries

1. The employee must be found innocent of the charges; and
2. His suspension must be unjustified (*CSC v. Cruz GR No. 187858, August 9, 2011*).

NOTE: The requirement that the suspension must be unjustified is automatically subsumed in the other requirement of exoneration (*CSC v. Cruz GR No. 187858, August 9, 2011*).

Q: When is suspension unjustified?

If the proper penalty imposable for the offense actually committed does not exceed one month, then there would have been no occasion for a suspension pending appeal since a decision imposing the penalty of suspension for not more than 30 days or fine in an amount not exceeding thirty days salary is final and not subject to appeal (*Book V, Section 47, par. 2 of Executive Order No. 292; Section 7, Rule III of Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, April 10, 1990, as amended by Administrative Order No.17, September 15, 2003 which took effect on November 19, 2003*).

Disciplinary Action

It is a proceeding, which seeks the imposition of disciplinary sanction against, or the dismissal or suspension of, a public officer or employee on any of the grounds prescribed by law after due hearing.

Availability of appeal in administrative disciplinary cases

1. *Appeal is available if the penalty is:*
 - a. Demotion;
 - b. Dismissal; or
 - c. Suspension for more than 30 days or fine equivalent to more than 30 day salary [*P.D. 807, Sec.37(a)*].

NOTE: Decisions are initially appealable to the department heads and then to the CSC. Only the respondent in the administrative disciplinary case, not the complainant, can appeal to the CSC from an adverse decision. The complainant in an administrative disciplinary case is only a witness, and as such, the latter cannot be considered as an aggrieved party entitled to appeal from an adverse decision (*Mendez v. CSC, G. R. No. 95575, December 23, 1991*).

2. *Appeal is NOT available if the penalty is:*
 - a. Suspension for not more than 30 days;
 - b. Fine not more than 30 day salary;
 - c. Censure;
 - d. Reprimand;
 - e. Admonition; or
 - f. When the respondent is exonerated.

NOTE: In the second case, the decision becomes final and executory by express provision of law.

Availability of the services of the Solicitor General

If the public official is sued for damages arising out of a felony for his own account, the State is not liable and the Solicitor General is not authorized to represent him therefore. The Solicitor General may only do so in suits for damages arising not from a crime but from the performance of a public officer's duties (*Vital-Gozon v. CA, G.R No. 101428, August 5, 1992*).

The Office of the Solicitor General can represent the public official at the preliminary investigation of his case, and that if an information is eventually filed against the said public official, the said Office may no longer represent him in the litigation (*Anti-Graft League v. Ortega, G.R. No. L-33912, September 11, 1980*).



ILLEGAL DISMISSAL, REINSTATEMENT, AND BACK SALARIES

Guiding principles

1. Reinstatement and back salaries are separate and distinct reliefs available to an illegally dismissed public officer or employee;
2. Back salaries may be awarded to illegally dismissed based on the constitutional provision that no officer or employee in the civil service shall be removed or suspended except for cause provided by law; to deny these employees their back salaries amounts to unwarranted punishment after they have been exonerated from the charge that led to their dismissal or suspension. The present legal basis for an award of back salaries is Section 47, Book V of the Administrative Code of 1987;
3. Back salaries are ordered paid to an officer or an employee **only if** he is exonerated of the charge against him **and** his suspension or dismissal is found and declared to be illegal;
4. If the exoneration of the employee is relative (as distinguished from complete exoneration), an inquiry into the factual premise of the offense charged and of the offense committed must be made. If the administrative offense found to have been actually committed is of lesser gravity than the offense charged, the employee cannot be considered exonerated if the factual premise for the imposition of the lesser penalty remains the same. The employee found guilty of a lesser offense may only be entitled to back salaries when the offense actually committed does not carry the penalty of more than one month suspension or dismissal (*CSC v. Cruz*, G.R. No. 187858, August 9, 2011).

Good faith vs. COA disallowance

Every public official is entitled to the presumption of good faith in the discharge of official duties, such that, in the absence of any proof that a public officer has acted with malice or bad faith, he should not be charged with personal liability for damages that may result from the performance of an official duty (*Lanto vs COA*, G.R. No. 217189, April 18, 2017).

Under the circumstances, the petitioners albeit officials of the MWSS, were not members of the Board of Trustees and, as such, could not be held personally liable for the disallowed benefits by virtue of their having had no part in the approval of the disallowed benefits. In sum, the recipients of the

benefits – officials and employees alike – were not liable to refund the amounts received for having acted in good faith due to their honest belief that the grant of the benefits had legal basis (*Metropolitan Waterworks and Sewerage System v. COA*, G.R. No. 217189, November 21, 2017).

Arias Doctrine

The head of office is not required to examine every single detail of any transaction from its inception until it is finally approved. We would be setting a bad precedent if a head of office plagued by all too common problems—dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence—is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. There has to be some added reason why he should examine each voucher in such detail (*Arias v. Sandiganbayan*, G.R. No. 81563, December 19, 1989).

NOTE: It must include certification from the subordinate and the supporting documents, otherwise Arias doctrine cannot be upheld.

IMMUNITY OF PUBLIC OFFICERS

Immunity

It is an exemption that a person or entity enjoys from the normal operation of the law such as a legal duty or liability, either criminal or civil.

Immunity of public officers from liabilities to third persons

It is well settled, as a general rule, that public officers of the government, in the performance of their public functions, are not liable to third persons, either for the misfeasances or positive wrongs, or for the nonfeasances, negligence, or omissions of duty of their official subordinates (*McCarthy v. Aldanese*, G.R. No. L-19715, March 5, 1923).

Rationale behind official immunity

It promotes fearless, vigorous, and effective administration of policies of government. The threat of suit could also deter competent people from accepting public office.



The immunity of public officers from liability for the non-feasances, negligence or omissions of duty of their official subordinates and even for the latter's misfeasances or positive wrongs rests upon obvious considerations of public policy, the necessities of the public service and the perplexities and embarrassments of a contrary doctrine[*Alberto Reyes, Wilfredo B. Domo-Ong and Herminio C. Principio v. Rural Bank of San Miguel (Bulacan), Inc., G.R. No. 154499, February 27, 2004*].

Applicability of the doctrine

This doctrine is applicable only whenever a public officer is in the performance of his public functions. On the other hand, this doctrine does not apply whenever a public officer acts outside the scope of his public functions.

NOTE: A public officer enjoys only qualified, NOT absolute immunity.

Distinction between official immunity from State immunity

Immunity of public officials is a more limited principle than governmental immunity, since its purpose is not directly to protect the sovereign, but rather to do so only collaterally, by protecting the public official in the performance of his government function, while, the doctrine of *State immunity* principally rested upon the tenuous ground that the king could do no wrong. It serves to protect the impersonal body politic or government itself from tort liability.

STATE IMMUNITY	OFFICIAL IMMUNITY
Principle of International Law.	Concept of Municipal Law.
Availed of by States against an international court or tribunal.	Availed of by public officials against the members of the public.
The purpose is to protect the assets of the State from any judgment.	To protect the public official from liability arising from negligence in the performance of his discretionary duties.

NOTE: When public officials perform purely ministerial duties, however, they may be held liable.

DE JURE AND DE FACTO OFFICERS

De jure officer

A *de jure* officer is one who is in all respects legally appointed or elected and qualified to exercise the office.

De facto officer (2000, 2004, 2009, 2010 Bar)

A *de facto* officer is one who assumed office under the color of a known appointment or election but which appointment or election is void for reasons that the officer was not eligible, or that there was want of power in the electing body, or that there was some other defect or irregularity in its exercise, wherein such ineligibility, want of power, or defect being unknown to the public.

De jure officer vs. *De facto* officer

DE JURE OFFICER	DE FACTO OFFICER
Has lawful title to the office.	Has possession of and performs the duties under a colorable title without being technically qualified in all points of law to act.
Holding of office rests on right.	Holding of office rests on reputation.
Officer cannot be removed through a direct proceeding (<i>quo warranto</i>).	Officer may be ousted in a direct proceeding against him.

Effects of the acts of *de facto* public officers

1. The lawful acts, so far as the rights of third persons are concerned are, if done within the scope and by the apparent authority of the office, are considered valid and binding;
2. The *de facto* officer cannot benefit from his own status because public policy demands that unlawful assumption of public office be discouraged;

NOTE: The general rule is that a *de facto* officer cannot claim salary and other compensations for services rendered by him as such. However, the officer may retain salaries collected by him for services rendered in good faith when there is no *de jure* officer claiming the office.

3. The *de facto* officer is subject to the same liabilities imposed on the *de jure* officer in the discharge of official duties, in addition to whatever special damages may be due from him because of his unlawful assumption of office; and
4. The acts of the *de facto* public officer, insofar as they affect the public, are valid, binding and with full legal effect.

Manner by which challenge to a *de facto* office is made

1. The incumbency may not be challenged collaterally or in an action to which the *de facto*



- officer is not a party;
2. The challenge must be made in a direct proceeding where title to the office will be the principal issue; and
 3. The authorized proceeding is *quo warranto* either by the Solicitor General in the name of the Republic or by any person claiming title to the office.

Q: Ross ran as congressman of Cagayan province. His opponent, Paulo, however, was the one proclaimed as the winner by the COMELEC. Ross filed seasonably a protest before the HRET. After two years, the HRET reversed the COMELEC's decision and Ross was proclaimed finally as the duly elected Congressman. Thus, he had only one year to serve in Congress.

1. Can Ross collect salaries and allowances from the government for the first two years of his term as Congressman?
2. Should Paulo refund to the government the salaries and allowances he had received as Congressman?
3. What will happen to the bills that Paulo alone authored and were approved by the HoR while he was seated as Congressman? Reason and explain briefly.

A:

1. **NO.** Ross cannot collect salaries and allowances from the government for the first two years of his term, because in the meanwhile Paulo collected the salaries and allowances. Paulo was a *de facto* officer while he was in possession of the office. To allow Ross to collect the salaries and allowances will result in making the government pay a second time.
2. **NO.** Paulo is not required to refund to the government the salaries and allowances he received. As a *de facto* officer, he is entitled to the salaries and allowances because he rendered services during his incumbency.
3. The bills which Paulo alone authored and were approved by the House of Representatives are valid because he was a *de facto* officer during his incumbency. The acts of a *de facto* officer are valid insofar as the public is concerned (*Rodriguez v. Tan*, G.R. No. L-3913, August 7, 1952).

Recovery of the salary received by a *de facto* officer during a wrongful tenure

As a rule, the rightful incumbent of the public office may recover from a *de facto* officer the salaries received by the latter during the time of the latter's wrongful tenure even though he entered into the office in good faith and under a colorable title. The

de facto officer takes the salaries at his risks and must therefore account to the *de jure* officer for the amounts he received. However, where there is no *de jure* officer, a *de facto* officer shall be entitled to the salaries and emoluments accruing during the period when he actually discharged the duties (*Monroy v. CA*, G.R. No. L-23258, July 1, 1967).

NOTE: In *Monroy v. CA*, the Supreme Court said that the *Rodriguez* ruling cannot be applied for the absence of factual and legal similarities.

Essence of *de facto* doctrine

The *de facto* doctrine has been formulated, not for the protection of the *de facto* officer principally, but rather for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of an office without being lawful officers.

Q: May the salary of a public officer or employee be subject to garnishment? Why?

A: NO. It may not, by garnishment, attachment, or order of execution, be seized before being paid to him, and appropriated for the payment of his debts, because of the following reasons:

1. While it is still in the hands of the disbursing officer, it belongs to the government;
2. Public policy forbids such practice since it would be fatal to the public service; and
3. It would be tantamount to a suit against the State in its own court, which is prohibited, except with its consent.

De facto officer vs. Usurper

DE FACTO OFFICER	USURPER (2000 Bar)
Complies with the 3 elements of a <i>de jure</i> officer, namely: <ol style="list-style-type: none"> 1. Existence of a <i>de jure</i> office; 2. Must possess the legal qualifications for the office in question; and 3. Must have qualified himself to perform the duties of such office according to the mode prescribed by law. 	Takes possession of an office and does official acts without any actual or apparent authority.
Has color of right or title to office.	Has neither color of right or title to office.



Acts are rendered valid as to the public until his title is adjudged insufficient.	Acts are absolutely void.
GR: The rightful incumbent of a public office may recover from an officer <i>de facto</i> the salary received by the latter during the time of his tenure even though he entered into the office in good faith and under color of title. XPN: Where there is no <i>de jure</i> public officer, the officer <i>de facto</i> who in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may, in an appropriate action, recover the salary, fees and other compensations attached to the office. <i>(Gen. Manager, Philippine Ports Authority v. Monserate, G.R. No. 129616, April 17, 2002)</i>	Not entitled to compensation

QUO WARRANTO

It is a proceeding or writ issued by the court to determine the right to use an office, position or franchise and to oust the person holding or exercising such office, position or franchise if his right is unfounded or if a person performed acts considered as grounds for forfeiture of said exercise of position, office, or franchise.

NOTE: It is commenced by a verified petition brought in the name of the Republic of the Philippines or in the name of the person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another (*Rules of Court, Rule 66, Sec. 1*).

Nature and purpose of *quo warranto*

It literally means "by what authority" and the object is to determine the right of a person to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well-founded, or if he has forfeited his right to enjoy the office (*Tecson v. Comelec, G.R. No. 161434, March 3, 2004*).

Propriety of *Quo Warranto* as a mode to remove an Impeachable Officer

The language of Section 2, Article XI of the Constitution does not foreclose a *quo warranto* action against impeachable officers. The provision uses the permissive term "may" which, in statutory construction, denotes discretion and cannot be construed as having a mandatory effect. We have consistently held that the term "may" is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise. An option to remove by impeachment admits of an alternative mode of effecting the removal.

We hold, therefore, that by its tenor, Section 2, Article XI of the Constitution allows the institution of a *quo warranto* action against an impeachable officer. After all, a *quo warranto* petition is predicated on grounds distinct from those of impeachment. The former questions the validity of a public officer's appointment while the latter indicts him for the so-called impeachable offenses without questioning his title to the office he holds (*Republic vs. Sereno, G.R. No. 237428, May 11, 2018*).

NOTE: The courts should be able to inquire into the validity of appointments even of impeachable officers. To hold otherwise is to allow an absurd situation where the appointment of an impeachable officer cannot be questioned even when, for instance, he or she has been determined to be of foreign nationality or, in offices where Bar membership is a qualification, when he or she fraudulently represented to be a member of the Bar. Unless such an officer commits any of the grounds for impeachment and is actually impeached, he can continue discharging the functions of his office even when he is clearly disqualified from holding it. Such would result in permitting unqualified and ineligible public officials to continue occupying key positions, exercising sensitive sovereign functions until they are successfully removed from office through impeachment. This could not have been the intent of the framers of the Constitution. (*ibid.*)

Prescription does not lie against the State in *Quo Warranto* Proceedings

When the Solicitor General himself commences the *quo warranto* action either (1) upon the President's directive, (2) upon complaint or (3) when the Solicitor General has good reason to believe that there is proof that (a) a person usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise; (b) a public officer does or suffers an act which is a ground for the forfeiture of his office; or (c) an association acts as a corporation without being legally incorporated or without lawful



authority so to act, he does so in the discharge of his task and mandate to see to it that the best interest of the public and the government are upheld. In these three instances, the Solicitor General is mandated under the Rules to commence the necessary *quo warranto* petition.

When the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of laches or prescription. Indubitably, the basic principle that "prescription does not lie against the State" which finds textual basis under Article 1108 (4) of the Civil Code, applies in this case.

Jurisprudence across the United States likewise richly reflect that when the Solicitor General files a *quo warranto* petition in behalf of the people and where the interests of the public are involved, the lapse of time presents no effective bar. Aptly, in *State ex rel Stovall v. Meneley*, it was held that a *quo warranto* action is a governmental function and not a propriety function, and therefore the doctrine of laches does not apply.

That prescription does not lie in this case can also be deduced from the very purpose of an action for *quo warranto*. *People v. City Whittier* explains that the remedy of *quo warranto* is intended to prevent a continuing exercise of an authority unlawfully asserted. Indeed, on point is *People v. Bailey* when it ruled that because *quo warranto* serves to end a continuous usurpation, no statute of limitations applies to the action.

Needless to say, no prudent and just court would allow an unqualified person to hold public office, much more the highest position in the Judiciary. In this case, the Republic cannot be faulted for questioning respondent's qualification for office only upon discovery of the cause of ouster (*Republic vs. Sereno*, G.R. No. 237428, May 11, 2018).

One-year prescriptive period applies only to private individuals

The long line of cases decided by this Court since the 1900's, which specifically explained the spirit behind the rule providing a prescriptive period for the filing of an action for *quo warranto*, reveals that such limitation can be applied only against private individuals claiming rights to a public office, not against the State.

Indeed, there is no proprietary right over a public office. Hence, a claimed right over a public office may be waived. In fact, even Constitutionally-protected rights may be waived. Thus, we have consistently held that the inaction of a person claiming right over a public office to assert the same within the prescriptive period provided by the rules,

may be considered a waiver of such right. This is where the difference between a *quo warranto* filed by a private individual as opposed to one filed by the State through the Solicitor General lies. There is no claim of right over a public office where it is the State itself, through the Solicitor General, which files a petition for *quo warranto* to question the eligibility of the person holding the public office. As We have emphasized in the assailed Decision, unlike Constitutionally-protected rights, Constitutionally-required qualifications for a public office can never be waived either deliberately or by mere passage of time. While a private individual may, in proper instances, be deemed to have waived his or her right over title to public office and/or to have acquiesced or consented to the loss of such right, no organized society would allow, much more a prudent court would consider, the State to have waived by mere lapse of time, its right to uphold and ensure compliance with the requirements for such office, fixed by no less than the Constitution, the fundamental law upon which the foundations of a State stand, especially so when the government cannot be faulted for such lapse (*Republic vs. Sereno*, G.R. No. 237428, June 19, 2018).

Quo warranto under Rule 66 vs. Quo warranto in electoral proceedings

QUO WARRANTO UNDER RULE 66	QUO WARRANTO IN ELECTORAL PROCEEDINGS
The issue is legality of the occupancy of the office by virtue of a legal appointment.	The issue is eligibility of the person elected.
<i>Grounds:</i> usurpation, forfeiture, or illegal association (<i>Rules of Court, Rule 66, Sec. 1</i>).	<i>Grounds:</i> ineligibility or disqualification to hold the office (<i>OEC, Sec. 253</i>).
Presupposes that the respondent is already actually holding office and action must be commenced within one year from cause of ouster or from the time the right of petitioner to hold office arose.	Petition must be filed within 10 days from the proclamation of the candidate.
Petitioner is person entitled to office.	Petitioner may be any voter even if he is not entitled to the office.
Person adjudged entitled to the office may bring a separate action against the respondent to recover damages (<i>Rules of Court, Rule 66, Sec. 11</i>).	Actual or compensatory damages are recoverable in <i>quo warranto</i> proceedings under the OEC.

NOTE: If the dispute is as to the counting of votes or on matters connected with the conduct of the



election, *quo warranto* is not the proper remedy but an election protest (*Cesar v. Garrido, G.R. No. 30705, March 25, 1929*).

TERMINATION OF OFFICIAL RELATIONS

Modes of terminating official relationships

1. Expiration of term or tenure;
2. Reaching the age limit for retirement;
3. Resignation;
4. Recall;
5. Removal;
6. Abandonment;
7. Acceptance of an incompatible office;
8. Abolition of office;
9. Prescription of the right to office;
10. Impeachment;
11. Death;
12. Failure to assume office;
13. Conviction of a crime; or
14. Filing of a COC

NOTE: Appointive officials, active members of the Armed Forces of the Philippines, and officers and employees of the GOCCs, shall be resigned from his office upon the filing of his CoC (*Quinto v. COMELEC, February 22, 2010, G.R. No. 189698*).

Elective officials shall continue to hold office, whether he is running for the same or a different position (*Fair Elections Act, Sec. 14 expressly repealed B.P. Blg. 881, Sec. 67*).

Age limit for retirement

1. For members of SC and judges of lower courts – 70 years old
2. Gov't officers and employees – 65 years old
3. Optional retirement – 60 years old and must have rendered at least 20 service years

Resignation (2000 Bar)

It is the act of giving up or declining a public office and renouncing the further right to use such office indefinitely. In order to constitute a complete and operative act of resignation, the officer or employee must show a clear intention to relinquish or surrender his position accompanied by an act of relinquishment. Resignation implies of the intention to surrender, renounce, relinquish the office (*Estrada v. Desierto, G.R. No. 146738, March 2, 2001*).

It must be in writing and accepted by the accepting authority as provided for by law.

Accepting authorities for resignation

1. For *appointed* officers, the tender of resignation must be given to the appointing authority;
2. For *elected* officers, tender to officer authorized by law to call an election to fill the vacancy. The following authorized officers are:
 - a. *Respective chambers* – For members of Congress;
 - b. *President* – For governors, vice-governors, mayors and vice-mayors of highly urbanized cities and independent component cities;
 - c. *Provincial governor* – For municipal mayors and vice-mayors, city mayors and vice-mayors of component cities;
 - d. *Sanggunian concerned* – For *sanggunian* members; and
 - e. Municipal/city mayors – For *barangay* officials.

Courtesy Resignation

It cannot properly be interpreted as resignation in the legal sense for it is not necessarily a reflection of a public official's intention to surrender his position. Rather, it manifests his submission to the will of the political authority and the appointing power (*Ortiz V. COMELEC, G.R. No. 78957, June 28, 1988*).

Q: During the May 1998 election, petitioner Sabrina was elected President while respondent Immaculate was elected Vice-President. From the beginning of her term, petitioner was plagued by *jueteng* issues that slowly eroded her popularity. Afterwards, the impeachment trial started and the people conducted a 10-kilometer line holding lighted candles in EDSA Shrine to symbolize their solidarity in demanding Sabrina's resignation. On January 19, Sabrina agreed to the holding of a snap election for President. On January 20, Chief Justice Valentin administered the oath to respondent Immaculate as President of the Philippines. On the same day, Sabrina issued a press statement that she was leaving Malacañang Palace for the sake of peace and in order to begin the healing process of the nation. It also appeared that on the same day, she signed a letter stating that she was transmitting a declaration that she was unable to exercise the powers and duties of his office and that by operation of law and the Constitution, the Vice-President shall be the Acting President. Are the acts of Sabrina constitutive of resignation?

A: YES. Resignation is not a high level legal abstraction. It is a factual question and its elements are beyond quibble: there must be an intent to resign and the intent must be coupled by acts of relinquishment (**totality test**). The validity of a resignation is not governed by any formal



requirement as to form. It can be oral, written, express or implied. As long as the resignation is clear, it must be given legal effect (*Estrada v. Desierto*, G.R. No. 146738, March 2, 2001).

Removal

It refers to the forcible and permanent separation of the incumbent from office before the expiration of the public officer's term (*Feria, Jr. v. Mison*, G.R. No. 8196, August 8, 1989).

Recall

It is an electoral mode of removal employed directly by the people themselves through the exercise of their right of suffrage. It is a political question not subject to judicial review. It is a political question that has to be decided by the people in their sovereign capacity (*Evardone v. COMELEC*, G.R. No. 94010, December 2, 1991).

NOTE: Recall only applies to local officials.

Limitations on recall

1. An elective official can be subjected to recall only once; and
2. No recall shall take place within one year from the assumption of office or one year immediately preceding a regular local election [*R.A. No. 7160, Sec. 74 (b)*].

NOTE: For the time bar to apply, the approaching local election must be one where the position of the official to be recalled is to be actually contested and filled by the electorate (*Angobung v. COMELEC*, G.R. No. 126576, March 5, 1997).

Effect of recall on the three-term limit rule (2010 Bar)

The three-term limit for local elected officials is not violated when a local official wins in a recall election for mayor after serving three full terms as mayor since the recall election is not considered an immediate re-election, it is not counted for purposes of the three-term limit. Term limits should be construed strictly to give the fullest possible effect to the right of the electorate to choose their leaders (*Socrates v. COMELEC*, G.R. No. 154512, November 12, 2002).

Abandonment (2000 Bar)

It is the voluntary relinquishment of an office by the holder with the intention of terminating his possession and control thereof.

Q: Does the acceptance of an incompatible office *ipso facto* vacate the other?

A: GR: Yes.

XPN: Where such acceptance is authorized by law.

NOTE: It is contrary to the policy of the law that the same individual should undertake to perform inconsistent and incompatible duties. He who, while occupying one office, accepts another incompatible with the first, *ipso facto*, absolutely vacates the first office. That the second office is inferior to the first does not affect the rule.

Q: Does the acceptance of an incompatible office pertain to its physical impossibility?

A:NO. The incompatibility contemplated is not the mere physical impossibility of one person's performing the duties of the two offices due to a lack of time or the inability to be in two places at the same moment, but that which proceeds from the nature and relations of the two positions to each other as to give rise to contrariety and antagonism should one person attempt to faithfully and impartially discharge the duties of one toward the incumbent of the other (*Canonizado v. Aguirre*, G.R. No. 133132, February 15, 2001).

Prescriptive period for petitions for reinstatement or recovery of public office

It must be instituted within one year from the date of unlawful removal from the office. Such period may be extended on grounds of equity.

Period to take the oath of office to avoid failure to assume office

Failure to take the oath of office within six months from proclamation of election shall cause the vacancy of the office UNLESS such failure is for a cause beyond his control (*OEC. 881, Sec. 11*).

Termination of official relationship through conviction by final judgment

When the penalty imposed carries with it the accessory penalty of disqualification.

THE CIVIL SERVICE

SCOPE

The Civil Service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled



corporations whether performing governmental or proprietary functions. [1987 Constitution, Art. IX-B, Sec. 2(1)]

Constitutional Functions of the CSC

As the central personnel agency of the government, it:

1. Establishes a career service;
2. Adopts measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the Civil Service;
3. Strengthens the merits and rewards system;
4. Integrates all human resources and development programs for all levels and ranks; and
5. Institutionalizes a management climate conducive to public accountability (1987 Constitution, Art. IX-B, Sec. 3).

Composition of the CSC

- A. Chairman; and
- B. Two Commissioners

The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of *seven years without reappointment*.

NOTE: Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity [1987 Constitution, Art. IX-B, Sec. 1(2)].

Qualifications

1. Natural-born citizen;
2. At least 35 years old at the time of appointment;
3. With proven capacity for public administration; and
4. Not a candidate in any election immediately preceding the appointment [1987 Constitution, Art. IX-B, Sec. 1(1)].

Disqualifications

1. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government of any GOCC or in any of its subsidiaries (1987 Constitution, Art. IX-B, Sec. 6);
2. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure. [1987 Constitution, Art. IX-B, Sec. 7(1)] (**1995, 2002 Bar**);

3. Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof including GOCCs or their subsidiaries [1987 Constitution, Art. IX-B, Sec. 7(2)]; and
4. No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political activity [1987 Constitution, Art. IX-B, Sec. 2(4)].

CLASSIFICATION

1. Career Service; and
2. Non-Career Service.

Career Service

The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

1. *Open Career* positions are those for appointment to which prior qualification in an appropriate examination is required;
2. *Closed Career* positions are those which are scientific or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
3. Positions in the *Career Executive Service* (CES), namely Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

NOTE: For a position to be considered as CES,

- a. The position must be among those enumerated under Book V, Title I, Subtitle A, Chapter 2, Section 7(3) of the Administrative Code of 1987 or a position of equal rank as those enumerated and identified by the CESB to be such position of equal rank; and
- b. The holder of the position must be a presidential appointee (*Seneres v. Sabido*, G.R. No. 172902, October 21, 2015).



Requisites for a CES employee to acquire security of tenure:

- a. CES eligibility; and
- b. Appointment to the appropriate CES rank (*Seneres v. Sabido, ibid.*).

(See more detailed discussion under Security of tenure for CES, *infra*.)

4. Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

5. Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

6. Personnel of government-owned or -controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and

7. Permanent laborers, whether skilled, semi-skilled, or unskilled.

Non-Career Service

The Non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.

The Non-Career Service shall include:

1. Elective officials and their personal or confidential staff;
2. Department Heads and other officials of Cabinet rank who hold positions at the pleasure of the President and their personal or confidential staff;
3. Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;
4. Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and
5. Emergency and seasonal personnel.

Classes of positions in the Career Service

a) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

1. The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;
2. The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and
3. The third level shall cover positions in the Career Executive Service.

b) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in the lower level. Entrance to the third level shall be prescribed by the Career Executive Service Board.

c) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupational groups. A candidate for promotion should, however, have previously passed the examination for that level (*P.D. 807, Art. IV*).

APPOINTMENTS TO THE CIVIL SERVICE

Manner of appointment to the civil service

Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination. [*1987 Constitution, Art. IX-B Sec. 2(2)*].

Principal groups of position in the Civil Service, on the basis of appointment

1. *Competitive positions* – According to merit and fitness to be determined by competitive examinations, as far as practicable;
2. *Non-competitive positions* – Do not have to take into account merit and fitness. No need for competitive examinations; and



- a. *Policy-determining* – They are tasked to formulate a method of action for the government or any of its subdivisions.
- b. *Primarily confidential* – Their duties are not merely clerical but devolve upon the head of an office, which, by reason of his numerous duties, delegates his duties to others, the performance of which requires skill, judgment, trust and confidence

Proximity Rule

The test used to determine confidentiality of a position. The occupant of a particular position could be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion without fear of embarrassment or misgivings of possible betrayals of personal trust and confidential matters of State (*De los Santos v. Mallare*, G.R. No. L-3881, August 31, 1950).

- c. *Highly technical* – Requires technical skill or training in the highest degree.

NOTE: The test to determine whether the position is non-competitive is the nature of the responsibilities, not the description given to it. The Constitution does not exempt the above-given positions from the operation of the principle that "no officer or employee of the civil service shall be removed or suspended except for cause provided by law."

Q: Who may be appointed in the civil service?

A: Whoever fulfills all the qualifications prescribed by law for a particular position may be appointed therein.

NOTE: The CSC cannot disapprove an appointment just because another person is better qualified, as long as the appointee is himself qualified. It cannot add qualifications other than those provided by law (*Cortez v. CSC*, G.R. No. 92673, March 13, 1991).

Authority to recall appointments

The Civil Service Commission has the authority to recall appointments made in disregard of the applicable provisions of Civil Service Law and regulations (*Sales v. Carreon Jr.*, G.R. No. 160791, February 13, 2007).

Q: The CSC issued a Resolution granting the City Government of Dumaguete the authority to take

final action on all its appointments subject to rules and regulations and within the limits and restrictions of the implementing guidelines of the CSC Accreditation Program as amended and subject to monthly monitoring by the Civil Service Field Office (CSFO). On June 5, 7, and 11, 2001, Dumaguete City outgoing Mayor Felipe Antonio B. Remollo promoted 15 city hall employees, and regularized another 74 city hall employees, including the herein 52 petitioners. But the incoming Mayor Perdiges did not honor the appointments made by former Mayor Remollo and he ordered the City Administrator to direct the City Assistant Treasurer to refrain from making any cash disbursements for payments of petitioners' salary differentials based on their new positions. Further, a CSC resolution was passed invalidating the appointments of the employees. Is the CSC authorized to invalidate appointments?

A: YES. In *Quirog v. Aumentado*, the Court held that the ruling in *De Rama v. Court of Appeals* does not mean that the *raison d'etre* behind the prohibition against midnight appointments may not be applied to those made by chief executives of local government units. Indeed, the prohibition is precisely designed to discourage, nay, even preclude, losing candidates from issuing appointments merely for partisan purposes thereby depriving the incoming administration of the opportunity to make the corresponding appointments in line with its new policies (*Nazareno v. City of Dumaguete*, G.R. No. 181559, October 2, 2009).

Security of tenure

It means that no officer or employee in the civil service shall be suspended or dismissed except for cause provided by law, and after due process or after he shall have been given the opportunity to defend himself.

NOTE: One must be validly appointed to enjoy security of tenure. Thus, one who is not appointed by the proper appointing authority does not acquire security of tenure.

Once an appointment is issued and completed and the appointee assumes the position, he acquires a legal right, not merely an equitable right to the position (*Lumigued v. Exevea*, G.R. No. 117565, November 18, 1997).

Regardless of the characterization of the position held by a government employee covered by civil service rules, be it career or non-career position, such employee may not be removed without just cause (*Jocom v. Regalado*, G.R. No. 77373, August 22, 1991).



Bases of the constitutional guaranty of security of tenure in the civil service (1999, 2005 Bar)

The prohibition against suspension or dismissal of an officer or employee of the Civil Service "except for cause provided by law" is "a guaranty of both procedural and substantive due process." "Not only must removal or suspension be in accordance with the procedure prescribed by law, but also they can only be made on the basis of a valid cause provided by law." (*Land Bank of the Philippines v. Rowena O. Paden*, G.R. No. 157607, July 7, 2009).

Characteristic of security of tenure

It is the nature of the appointment that characterizes security of tenure and not the nature of one's duties or functions.

Where the appointment is permanent, it is protected by the security of tenure provision. But if it is temporary or in an acting capacity, which can be terminated at any time, the officer cannot invoke the security of tenure.

NOTE: The holder of a temporary appointment cannot claim a vested right to the station to which assigned, nor to security of tenure thereat. Thus, he may be reassigned to any place or station (*Teotico v. Agda*, G.R. No. 87437, May 29, 1991).

Attachment of security of tenure

It attaches once an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable, right (to the position) which is protected not only by statute, but also by the constitution, and cannot be taken away from him either by revocation of the appointment, or by removal, except for cause, and with previous notice and hearing (*Aquino v. CSC*, G.R. No. 92403, April 22, 1992).

Security of tenure for Career Executive Service (CES)

Security of tenure in the CES is thus acquired with respect to rank and not to position. The guarantee of security of tenure to members of the CES does not extend to the particular positions to which they may be appointed – a concept which is applicable only to first and second-level employees in the civil service – but to the rank to which they are appointed by the President. Within the CES, personnel can be shifted from one office or position to another without violation of their right to security of tenure because their status and salaries are based on their ranks and not on their jobs (*Seneres v. Sabido*, G.R. No. 172902, October 21, 2015).

Illustration: The position of NCC (National Computer Center) Director General is a CES position equivalent to Career Executive Service Officer (CESO) Rank I. Seneres is already CES eligible, but no President has yet appointed him to any CES rank (despite the previous recommendation of the CESB for his appointment to CESO Rank I). Therefore, Seneres's membership in the CES is still incomplete. Falling short of one of the qualifications that would complete his membership in the CES, Seneres cannot successfully interpose violation of security of tenure. His appointment to the position of NCC Director General could only be construed as temporary, and he could be removed any time even without cause. Even assuming that he was already conferred with a CES rank, his appointment would be permanent as to his CES rank only but not as to his position as NCC Director General. As member of the CES, he could be reassigned or transferred from one position to another from one department, bureau, or office to another provided that there would be no reduction in his rank or salary and that his reassignment/transfer was not oftener than every two years, among other conditions (*Seneres v. Sabido*, *ibid.*).

Security of tenure for non-competitive positions

1. *Primarily confidential* officers and employees hold office only for so long as confidence in them remains. If there is genuine loss of confidence, there is no removal, but merely the expiration of the term of office.
2. *Non-career* service officers and employees' security of tenure is limited to a period specified by law, coterminous with the appointing authority or subject to his pleasure, or which is limited to the duration of a particular purpose.
3. *Political appointees in Foreign Service* possess tenure coterminous with that of the appointing authority or subject to his pleasure.

Instances where a transfer may be considered violative of employee's security of tenure

When the transfer is a preliminary step toward his removal, or a scheme to lure him away from his permanent position, or when it is designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision that safeguards the tenure of office of those who are in the Civil Service (*CSC v. PACHEO*, G.R. No. 178021, January 25, 2012).

NOTE: Acceptance of a temporary appointment or assignment without reservation or upon one's own volition is deemed waiver of security of



tenure(*Palmera v. CSC, G.R. No. 110168, August 4, 1994*).

Rules applicable to temporary employees vis-a-vis security of tenure

1. Not protected by security of tenure – can be removed anytime even without cause;
2. If they are separated, this is considered an expiration of term. But, they can only be removed by the one who appointed them; and
3. Entitled to such protection as may be provided by law[*1987 Constitution, Art. IX-B, Sec. 2(6)*].

Q: May the courts determine the proper classification of a position in government? Is the position of corporate secretary in a GOCC primarily confidential in nature?

A: YES. The courts may determine the proper classification of a position in government. A strict reading of the law (E.O. 292) reveals that primarily confidential positions fall under the non-career service. The tenure of a confidential employee is coterminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.

Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the CSC. The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications made by other bodies.

In fine, a primarily confidential position is characterized by the *close proximity* of the positions of the appointer and appointee as well as the high degree of trust and confidence inherent in their relationship.

In the light of the instant controversy, the Court's view is that the greater public interest is served if the position of a corporate secretary is classified as primarily confidential in nature(*CSC v. Javier, G.R. No. 173264, February 22, 2008*).

PERSONNEL ACTIONS

Any action denoting movement or progress of personnel in the civil service (*City Mayor Debulgado v. CSC, G.R. No. 111471, September 26, 1994*).

Personnel actions include

1. *Appointment through Certification* – It is issued to a person who has been selected from a list of qualified persons certified by the Commission from an appropriate register of eligible and who meets all other requirements of the position [*Revised Administrative Code of 1987, Title I-A, Book V, Chapter 5, Sec. 26(2)*];
2. *Promotion* – It is the movement from one position to another with increase in duties and responsibilities as authorized by law and usually accompanied by an increase in pay [*Revised Administrative Code of 1987, Title I-A, Book V, Chapter 5, Sec. 26(2)*];
3. *Transfer* – A movement from one position to another which is of equivalent rank, level or salary without break in service involving issuance of an appointment;
4. *Reinstatement* – A person who has been permanently appointed to a position in the career service and who has, through no delinquency or misconduct, been separated therefrom, may be reinstated to a position in the same level for which he is qualified;
5. *Reemployment* – Persons who have been appointed permanently to positions in the career service and who have been separated as result of reduction in force and or reorganization shall be entered in a list from which selection for reemployment shall be made (*The Revised Administrative Code of 1987, Chapter 5, Book V, Title I-A, Sec. 26(5)*);
6. *Detail* – A movement of an employee from one agency to another without issuance of an appointment and shall be allowed, only for a limited period in the case of employees occupying professional, technical and scientific positions (*The Revised Administrative Code of 1987, Chapter 5, Book V, Title I-A, Sec. 26(6)*);
7. *Reassignment* – An employee may be reassigned from one organizational unit to another in the same agency, provided that such reassignment shall not involve a reduction in rank, status or salary[*Revised Administrative Code of 1987, Title I-A, Book V, Chapter 5, Sec. 26(7)*];
8. *Demotion* – A movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status or rank which may or may not involve reduction in salary;
9. *Secondment* – It is the movement of an employee from one department or agency to another which is temporary in nature. It may or may not require the issuance of an appointment, and may involve an increase in compensation and benefits. Acceptance of a secondment is voluntary on the part of the employee. The payment of salaries of a seconded employee shall be borne by the receiving agency and the seconded employee



shall be on leave without pay in his mother
agency for the duration of his secondment.
(*Señeres v. Sabido*, G.R. No. 172902, Oct. 21,
2015).



ACCOUNTABILITY OF PUBLIC OFFICERS

IMPEACHMENT (2012 Bar)

It pertains to the method by which persons holding government positions of high authority, prestige, and dignity and with definite tenure may be removed from office for causes closely related to their conduct as public officials.

NOTE: It is a national inquest into the conduct of public men. It is primarily intended for the protection of the State, not for the punishment of the offender. The penalties attached to the impeachment are merely incidental to the primary intention of protecting the people as a body politic.

Impeachable officers

1. President;
2. Vice-President;
3. Members of the Supreme Court;
4. Members of the Constitutional Commissions; and
5. Ombudsman.

NOTE: The enumeration is exclusive (1987 Constitution, Art. XI, Sec. 2).

Grounds for impeachment (CTB-GOB) (1999, 2012, 2013 Bar)

1. Culpable violation of the Constitution;
2. Treason;
3. Bribery;
4. Graft and Corruption;
5. Other high crimes ; and
6. Betrayal of public trust (1987 Constitution, Art. XI, Sec. 2).

NOTE: The enumeration is exclusive.

Culpable violation of the Constitution

It refers to wrongful, intentional or willful disregard or flouting of the fundamental law. Obviously, the act must be deliberate and motivated by bad faith to constitute a ground for impeachment. Mere mistakes in the proper construction of the Constitution, on which students of law may sincerely differ, cannot be considered a valid ground for impeachment.

Betrayal of public trust

This refers to "acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers." Acts that should constitute betrayal of public trust as to warrant removal from

office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment (*Gonzales III v. Office of the President*, G.R. No. 196231, September 4, 2012).

Steps in the impeachment process (2012 Bar)

1. Initiating impeachment case

- a. Verified complaint filed by any member of the House of Representatives or any citizen upon resolution of endorsement by any member thereof;

NOTE: If the verified complaint is filed by at least 1/3 of all its members of the House of Representatives, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed [1987 Constitution, Art. XI, Sec. 3 (4)].

- b. Inclusion in the order of business within 10 session days;
- c. Referred to the proper committee within 3 session days from its inclusion;
- d. The committee, after hearing, and by majority vote of all its members, shall submit its report to the House of Representatives together with the corresponding resolution;
- e. Placing on calendar the Committee resolution within 10 days from submission;
- f. Discussion on the floor of the report; and
- g. A vote of at least 1/3 of all the members of the House of Representatives shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the committee or override its contrary resolution [(1987 Constitution, Art. XI, Sec. 3 (2-3))].

2. Trial and Decision in impeachment proceedings

- a. The Senators take an oath or affirmation; and

NOTE: When the President of the Philippines shall be impeached, the Chief Justice of the Supreme Court shall preside, otherwise the Senate President shall preside in all other cases of impeachment (*Senate Resolution No. 890*).

- b. A decision of conviction must be concurred in by at least 2/3 of all the members of Senate.

NOTE: The power to impeach is essentially a non-legislative prerogative and can be exercised by Congress only within the limits of the authority conferred upon it by the Constitution (*Gutierrez v.*



House of Representatives Committee on Justice, G.R. No. 193459, February 15, 2011).

The Senate has the sole power to try and decide all cases of impeachment [1987 Constitution, Art. XI, Sec. 3(6)].

Determination of sufficiency of form and substance of an impeachment complaint

An exponent of the express constitutional grant of rulemaking powers of the HoR.

In the discharge of that power and in the exercise of its discretion, the House has formulated determinable standards as to form and substance of an impeachment complaint. Furthermore, the impeachment rules are clear in echoing the constitutional requirements in providing that there must be a “verified complaint or resolution” and that the substance requirement is met if there is “a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee.” (*Gutierrez v. House of Representatives Committee on Justice, G.R. No. 193459, February 15, 2011*).

Power of the HoR to determine the sufficiency of form and substance of an impeachment complaint

It is an exponent of the express constitutional grant of rulemaking powers of the HoR. In the discharge of that power and in the exercise of its discretion, the House has formulated determinable standards as to form and substance of an impeachment complaint. Furthermore the impeachment rules are clear in echoing the constitutional requirements in providing that there must be a “verified complaint or resolution” and that the substance requirement is met if there is “a recital of facts constituting the offense charged and determinative of the jurisdiction of the committee” (*Gutierrez v. House of Representatives Committee on Justice, ibid.*).

Limitations imposed by the Constitution upon the initiation of impeachment proceedings

1. The House of Representatives shall have the exclusive power to initiate all cases of impeachment; and
2. Not more than one impeachment proceeding shall be initiated against the same official within a period of one year (**One-year bar rule**).

NOTE: An *impeachment case* is the legal controversy that must be decided by the Senate while an *impeachment proceeding* is one that is initiated in the House of Representatives. For purposes of applying the one-year bar rule, the

proceeding is initiated or begins when a verified complaint is filed and referred to the Committee on Justice for action (*Francisco v. House of Representatives, et. al., G.R. No. 160261, November 10, 2003*).

The power to impeach is essentially a non-legislative prerogative and can be exercised by Congress only within the limits of the authority conferred upon it by the Constitution (*Francisco v. House of Representatives, ibid.*). It is, by its nature, a *sui generis* politico-legal process (*Gonzales III v. Office of the President, G.R.196231, January 28, 2014*).

Impeachment is deemed initiated

A verified complaint is filed and referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow. The term “to initiate” refers to the filing of the impeachment complaint coupled with Congress’ taking initial action of said complaint (*Francisco v. House of Rep., G.R. No. 160261, Nov. 10, 2003*).

One-year bar rule (2014 Bar)

Initiation takes place by the act of filing of the impeachment complaint **and** referral to the House Committee on Justice. Once an impeachment complaint has been initiated in the foregoing manner, another may not be filed against the same official within the one year period (*Gutierrez v. HoR Committee on Justice, ibid.*).

NOTE: The limitation refers to the element of time, and not the number of complaints. The impeachable officer should defend himself in only one impeachment proceeding, so that he will not be precluded from performing his official functions and duties. Similarly, Congress should run only one impeachment proceeding so as not to leave it with little time to attend to its main work of law-making (*Gutierrez v. The House of Representatives Committee on Justice, ibid.*).

Purpose of the one-year bar rule

1. To prevent undue or too frequent harassment; and
2. To allow the legislature to do its principal task of legislation (*Francisco v. House of Representatives supra.*).

The consideration behind the intended limitation refers to the element of time, and not the number of complaints. The impeachable officer should defend himself in only one impeachment proceeding, so that he will not be precluded from performing his official functions and duties. Similarly, Congress should run only one impeachment proceeding so as



not to leave it with little time to attend to its main work of law-making. The doctrine laid down in *Francisco* that initiation means filing and referral remains congruent to the rationale of the constitutional provision (*Gutierrez v. The House of Representatives Committee on Justice, supra*).

NOTE: Congress may look into separate complaints against an impeachable officer and consider the inclusion of matters raised therein, in the adoption of the Articles of Impeachment (*Francisco v. House of Representatives, et. al., supra*).

Effects of conviction in impeachment (2012 Bar)

1. Removal from office;
2. Disqualification to hold any other office under the Republic of the Philippines; and
3. Party convicted shall be liable and subject to prosecution, trial and punishment according to law [1987 Constitution, Art. XI, Sec. 3 (7)].

Q: Can a Supreme Court Justice be charged in a criminal case or disbarment proceeding instead of an impeachment proceeding?

A: NO, because the ultimate effect of either is to remove him from office, circumventing the provision on removal by impeachment thus violating his security of tenure (*In Re: First Indorsement from Hon. Raul Gonzalez, A.M. No. 88-4-5433, April 15, 1988*).

An impeachable officer who is a member of the Philippine bar cannot be disbarred first without being impeached (*Jarque v. Desierto, A.C. No. 4509, December 5, 1995*).

Judicial review in impeachment proceedings

The precise role of the judiciary in impeachment cases is a matter of utmost importance to ensure the effective functioning of the separate branches while preserving the structure of checks and balance in our government. The acts of any branch or instrumentality of the government, including those traditionally entrusted to the political departments, are proper subjects of judicial review if tainted with grave abuse or arbitrariness (*Chief Justice v. Senate, G.R. No. 200242, July 17, 2012*).

OMBUDSMAN

Composition:

1. The Ombudsman;
2. One overall Deputy;
3. At least one Deputy **each** for Luzon, Visayas and Mindanao; and
4. One Deputy for the military establishment (1987 Philippine Constitution, Art. XI, Sec. 5).

FUNCTIONS

1. Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases **(2012 Bar)**;
2. Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
3. Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of R.A. 6770: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer **(2009 Bar)**;
4. Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;
5. Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;



6. Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;
7. Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;
8. Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;
9. Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;
10. Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;
11. Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein (*R.A. 6770, Sec. 15*); and
12. Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law [*1987 Constitution, Art. XI, Sec. 13(7)*; see also *R.A. 6770, Sec. 18*].

NOTE: The Ombudsman can investigate the acts of the Supreme Court(**2003 Bar**).

The powers of the Ombudsman are not merely recommendatory. His office was given teeth to render this constitutional body not merely functional but also effective. Under R.A. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary (*Estarija v. Ranada, G.R. No. 159314, June 26, 2006*).

Effect of charges arising from same act/omission lodged before the Ombudsman and regular courts

Administrative and criminal charges filed before the Office of the Ombudsman and the trial court, respectively, are separate and distinct from each other even if they arise from the same act or omission. This is because the quantum of proof required in criminal cases is proof beyond reasonable doubt, while in administrative cases, only substantial evidence is required. Moreover, the purpose of the administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. Thus, even the dismissal of a criminal case does not necessarily foreclose the administrative action against the respondent (*Gonzales v. Serrano. G.R. No. 175433, March 11, 2015*).

Ombudsman's fiscal autonomy

The Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released(*1987 Constitution, Art. XI, Sec. 14*).

Term of office

Seven years without reappointment (*1987 Constitution, Art. XI, Sec. 11*).

Qualifications of the Ombudsman and his Deputies

1. Natural born citizen of the Philippines;
2. At least 40 years of age at the time of appointment;
3. Of recognized probity and independence;
4. Member of the Philippine Bar;
5. Must not have been candidate for any elective office in the immediately preceding election; and
6. For the Ombudsman: He must have been for 10 years or more, a judge or engaged in the practice of law in the Philippines.

NOTE: The Ombudsman may only be removed by impeachment.

Rank and salary

The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary, which shall not be decreased during their term of office (*1987 Philippine Constitution, Art. XI, Sec. 10*).

Disqualifications and inhibitions

1. Shall not hold any other office or employment;



2. Shall not engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office; and
3. Shall not be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, or any of its subdivisions, etc. Shall not be qualified to run for any office in the election immediately succeeding their cessation from office (R.A. 6770, Sec. 9).

Scope of powers

1. The Ombudsman can investigate only officers of government owned corporations with original charters (*Khan, Jr v. Ombudsman*, G.R. No. 125296, July 20, 2006).
2. The jurisdiction of the Ombudsman over disciplinary cases involving public school teachers has been modified by Sec. 9 of R.A. 4670 (Magna Carta for Public School Teachers) which says that such cases must first go to a committee appointed by the Secretary of Education (*Ombudsman v. Estandarte*, G.R. 168670, April 13, 2007);
3. The Ombudsman Act authorizes the Ombudsman to impose penalties in administrative cases (*Ombudsman v. CA*, G.R. No. 167844, Nov. 22, 2006; *Ombudsman v. Lucero*, G.R. No. 168718 November 24, 2006);

NOTE: According to Sec. 60 of the LGC, elective officials may be dismissed only by the proper court. "Where the disciplining authority is given only the power to suspend and not the power to remove, it should not be permitted to manipulate the law by usurping the power to remove." (*Sangguniang Barangay v. Punong Barangay*, G.R. No. 170626, March 3, 2008).

4. The Special Prosecutor may not file information without authority from the Ombudsman (*Perez v. Sandiganbayan*, G.R. No. 166062, September 26, 2006).
5. The Ombudsman has been conferred rule making power to govern procedures under it (*Buencamino v. CA*, GR 175895, April 12, 2007).
6. A preventive suspension will only last 90 days, not the entire duration of the criminal case (*Villasenor v. Sandiganbayan* G.R. No. 180700, March 4, 2008).
7. Sec 14, first paragraph, of the Ombudsman Act, which says, "No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act,

unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman" is DECLARED INEFFECTIVE until SC issues a procedural rule on the matter (Carpio-Morales v. CA, G.R. No. 217126-27, November 10, 2015); and

8. Sec 14, second paragraph, of the Ombudsman Act, which says, "No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law" is UNCONSTITUTIONAL for it attempts to effectively increase SC's appellate jurisdiction without its advice and concurrence (*Carpio-Morales v. Binay, Jr., ibid.*).

Delegability of the powers of the Ombudsman

The power to investigate or conduct a preliminary investigation on any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistants, either in their regular capacities or as deputized Ombudsman prosecutors (*Honasan II v. Panel of Investigators of the DOJ*, G.R. No. 159747, June 15, 2004).

NOTE: While the Ombudsman's power to investigate is primary, it is not exclusive and, under the Ombudsman Act of 1989, he may delegate it to others and take it back any time he wants to (*Acop v. Ombudsman*, G.R. No. 120422, September 27, 1995).

Power of the Ombudsman to directly dismiss a public officer

Under Sec. 13(3) of Art. XI, the Ombudsman can only recommend to the officer concerned the removal of a public officer or employee found to be administratively liable (*Tapiador v. Office of the Ombudsman*, G.R. No. 129124, March 15, 2002). Be that as it may, the refusal, without just cause, of any officer to comply with such an order of the Ombudsman to penalize erring officer or employee is a ground for disciplinary action. Thus, there is a strong indication that the Ombudsman's recommendation is not merely advisory in nature but actually mandatory within the bounds of law. This should not be interpreted as usurpation of the Ombudsman of the authority of the head of office or any officer concerned. It has long been settled that the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority, but a shared or concurrent authority in respect of the offense charged (*Ledesma v. CA*, G.R. No. 161629, July 29, 2005).



Power of the Military Deputy Ombudsman to investigate civilian police

Since the power of the Ombudsman is broad and the Deputy Ombudsman acts under the direction of the Ombudsman, the power of the Military Deputy to investigate members of the civilian police has also been affirmed (*Acop v. Ombudsman*, G.R. No. 120422, September 27, 1995).

The Ombudsman may still investigate even if the private complainants lack sufficient personal interest in the subject matter of grievance

Sec 20 of R.A. 6770 has been clarified by the Rules of Procedure of the Office of the Ombudsman. Under, Sec 4, Rule III thereof, even if the ground raised is the supposed lack of sufficient personal interest of complainants in the subject matter of the grievance under Sect 20(4) [R.A. 6770], the dismissal on that ground is **not mandatory and is discretionary** on the part of the Ombudsman or Deputy Ombudsman evaluating the administrative complaint. The Ombudsman cannot be faulted for exercising its discretion under Sec 20 of R.A. 6670, which allows the Ombudsman to decide not to conduct the necessary investigation of any administrative act or omission complained of, if it believes that the complainant has no sufficient personal interest in the subject matter of the grievance (*Bueno v. Office of the Ombudsman*, G.R. No. 191712, September 17, 2014).

Q: Can the claim of confidentiality prevent the Ombudsman from demanding the production of documents needed for their investigation?

A: NO. In *Almonte v. Vasquez*, G.R. No. 95367, May 23, 1995, the Court said that where the claim of confidentiality does not rest in the need to protect military, diplomatic or the national security secrets but on general public interest in preserving confidentiality, the courts have declined to find in the Constitution an absolute privilege even for the President.

Moreover, even in cases where matters are really confidential, inspection can be done in camera.

JUDICIAL REVIEW IN ADMINISTRATIVE PROCEEDINGS

Authority of the Ombudsman in reviewing Administrative proceedings

Sec. 19 of the Ombudsman Act further enumerates the types of acts covered by the authority granted to the Ombudsman. The Ombudsman shall act on all

complaints relating, but not limited to acts or omissions which:

1. Are contrary to law or regulation;
2. Are unreasonable, unfair, oppressive or discriminatory;
3. Are inconsistent with the general course of an agency's functions, though in accordance with law;
4. Proceed from a mistake of law or an arbitrary ascertainment of facts;
5. Are in the exercise of discretionary powers but for an improper purpose; or
6. Are otherwise irregular, immoral or devoid of justification.

In the exercise of its duties, the Ombudsman is given **full** administrative disciplinary authority. His power is not limited merely to receiving, processing complaints, or recommending penalties. He is to conduct investigations, hold hearings, summon witnesses, and require production of evidence and place respondents under preventive suspension. This includes the power to impose the penalty of removal, suspension, demotion, fine, or censure of a public officer or employee (*Ombudsman v. Galicia*, G.R. No. 167711, October 10, 2008).

NOTE: Appeals from resolutions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals *via* Petition for Review under Rule 43 of the Rules of Court (*Fabian v. Desierto*, G.R. No. 129742, September 16, 1998).

JUDICIAL REVIEW IN PENAL PROCEEDINGS

Authority of the Ombudsman in reviewing penal proceedings

In the exercise of its investigative power, the Court has consistently held that courts will not interfere with the discretion of the fiscal or the Ombudsman to determine the specificity and adequacy of the averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form and substance or if he otherwise finds no ground to continue with the inquiry; or he may proceed with the investigation of the complaint if, in his view, it is in due and proper form (*Ocampo v. Ombudsman*, G.R. No. 103446-47, August 30, 1993).

NOTE: In *Garcia-Rueda v. Pascasio*, G.R. No. 118141, September 5, 1997, the Court held that "while the Ombudsman has the full discretion to determine whether or not a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of



discretion.”

SANDIGANBAYAN

Sandiganbayan is a special appellate collegial court in the Philippines. The special court was established by P.D. No. 1486, as subsequently modified by P.D. No. 1606 and by R.A. numbered 7975, 8249 and 10660.

Composition of the *Sandiganbayan*

Under P.D. 1606, as amended by R.A. 8249, further amended by R.A. 10660, it is composed of:

1. Presiding Justice; and
2. Twenty Associate Justices, with the rank of Justice of the Court of Appeals.

NOTE: It sits in seven divisions with three members each.

Nature of the *Sandiganbayan*

Sandiganbayan is NOT a constitutional court. It is a statutory court; that is, it is created not by the Constitution, but by statute, although its creation is mandated by the Constitution.

Exclusive original jurisdiction of the *Sandiganbayan*

1. Violations of R.A. No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, R.A. No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
 - a. Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (R.A. No. 6758), specifically including:
 - i. Provincial governors, vice-governors, members of the sangguniang panlalawigan and provincial treasurers, assessors, engineers and other provincial department heads;
 - ii. City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors engineers and other city department heads;
 - iii. Officials of the diplomatic service occupying the position of consul and higher;

- iv. Philippine army and air force colonels, naval captains, and all officers of higher rank;
- v. Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;
- vi. City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; and
- vii. Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations.
- b. Members of Congress and officials thereof classified as Grade'27'and and higher under the Compensation and Position Classification Act of 1989;
- c. Members of the judiciary without prejudice to the provisions of the Constitution;
- d. Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and
- e. All other national and local officials classified as Grade'27'and higher under the Compensation and Position Classification Act of 1989.

2. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.
3. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

NOTE: The Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000.00)(R.A. 10660, Sec. 2).

NOTE: In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, they shall be tried jointly with said public officers and employees. (PD 1606, Sec. 4)

Private persons may be charged together with public officers to avoid repeated and unnecessary presentation of witnesses and exhibits against



conspirators in different venues, especially if the issues involved are the same. It follows therefore that if a private person may be tried jointly with public officers, he may also be convicted jointly with them (*Balmadrid v. Sandiganbayan*, G.R. No. L-58327, March 22, 1991).

Determination of the jurisdiction of the Sandiganbayan

It shall be determined by the allegations in the information specifically on whether or not the acts complained of were committed in relation to the official functions of the accused. It is required that the charge be set forth with particularity as will reasonably indicate that the exact offense which the accused is alleged to have committed is one in relation to his office (*Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999).

Jurisdiction over the violation of R.A. No. 9165 committed by a public official with Salary Grade 31 during incumbency

A plain reading of R.A. 9165, as of R.A. 6425, will reveal that jurisdiction over drug-related cases is exclusively vested with the Regional Trial Court and no other. The clear intent of the legislature not only to retain the "exclusive original jurisdiction" of the RTCs over violations of the drugs law but to segregate from among the several RTCs of each judicial region some RTCs that will "exclusively try and hear cases involving violations of [R.A. 9165]." If at all, the change introduced by the new phraseology of Section 90, R.A. 9165 is not the deprivation of the RTCs' "exclusive original jurisdiction" but the further restriction of this "exclusive original jurisdiction. The exclusive original jurisdiction over violations of R.A. 9165 is not transferred to the Sandiganbayan whenever the accused occupies a position classified as Grade 27 or higher, regardless of whether the violation is alleged as committed in relation to office. The power of the Sandiganbayan to sit in judgment of high-ranking government officials is not omnipotent. The Sandiganbayan's jurisdiction is circumscribed by law and its limits are currently defined in R.A. 10660.

Section 4(b) of P.D. 1606, as amended by R.A. 10660, is the general law on jurisdiction of the Sandiganbayan over crimes and offenses committed by high-ranking public officers in relation to their office; Section 90, R.A. 9165 is the special law excluding from the Sandiganbayan's jurisdiction violations of R.A. 9165 committed by such public officers. In the latter case, jurisdiction is vested upon the RTCs designated by the Supreme Court as drugs court, regardless of whether the violation of R.A. 9165 was committed in relation to the public officials' office (*De Lima v. Guerrero*, G.R. No. 229781, October 10, 2017).

Voting requirement

All three members of a division shall deliberate on all matters submitted for judgment, decision, final order or resolution.

The concurrence of a majority of the members of a division shall be necessary to render a judgment, decision, or final order, or to resolve interlocutory or incidental motions (*R.A. 10660, Sec. 3*).

Mandatory suspension of a public officer against whom a valid information is filed

It is now settled that Sec. 13, R.A. 3019, makes it mandatory for the Sandiganbayan to suspend any public officer against whom a valid information charging violation of that law, or any offense involving fraud upon the government or public funds or property is filed (*Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994).

NOTE: Under Sec. 13, R.A. 3019, any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the RPC on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

Appeal from a decision of the Sandiganbayan to the SC

The appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited to questions of law (*Cabaron v. People*, G.R. No. 156981, October 5, 2009).

ILL-GOTTEN WEALTH

Any asset, property, business enterprise or material possession of any person within the purview of Sec. 2 of R.A. 7080, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any



government contract or project or by reason of the office or position of the public officer concerned;

3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned-or-controlled corporations and their subsidiaries;
4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;
5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; and
6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines (R.A. 7080, "An Act Defining and Penalizing the Crime of Plunder").

Non-applicability of prescription, laches and estoppel in criminal prosecution for the recovery of ill-gotten wealth

The provision found in Sec. 15, Art. XI of the 1987 Constitution that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel," has already been settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130140, where the Court held that the above cited constitutional provision "applies only to civil actions for recovery of ill-gotten wealth, and NOT to criminal cases (*Presidential Ad Hoc Fact-Finding Committee On Behest Loans v. Desierto*, G.R. No. 135715, April 13, 2011).

TERM LIMITS

(Correlate discussion on Term Limits under Local Governments)

Term vs. Tenure

TERM	TENURE
The time during which the officer may claim to hold the office as a right, and fixes the interval after which the several incumbents shall	Represents the period during which the incumbent actually holds the office.

succeed one another.	
It is not affected by holding over of the incumbent after expiration of the term for which he was appointed or elected.	It may be shorter than term.

NOTE: *Term of office* is different from the *right to hold office*. The latter is the just and legal claim to hold and enjoy the powers and responsibilities of the office (*Casibang v. Aquino*, G.R. No. L-38025, August 20, 1979).

Kinds of terms

1. Term fixed by law;
2. Term dependent on good behavior until reaching retirement age; and
3. Indefinite term, which terminates at the pleasure of the appointing authority (*Borres v. CA*, G.R. No. L-36845, August 21, 1998).

Three-Term Limit Rule

The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms.

For the three-term limit rule for elective local government officials to apply, two conditions or requisites must concur, to wit: 1) that the official concerned has been elected for three consecutive terms in the same local government post, and 2) that he has fully served three consecutive terms (*Lonzanida v. COMELEC*, G.R. No. 135150, July 28, 1999).

Rationale: To prevent the establishment of political dynasties and to enhance the freedom of choice of the people (*Borja, Jr. v. COMELEC*, G.R. No. 133495, Sept. 3, 1998).

Voluntary renunciation

It is an act of surrender based on the surrenderee's own freely exercised will; in other words, a loss of title to office by conscious choice (*Aldovino v. COMELEC*, G.R. No. 184836, December 23, 2009).

NOTE: Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected (1987 Constitution, Art. X, Sec. 8).

Q: Is the preventive suspension of an elected public official an interruption of his term of



office for purposes of the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of Republic Act No. 7160?

A: NO. Strict adherence to the intent of the three-term limit rule demands that preventive suspension should not be considered an interruption that allows an elective officials stay in office beyond three terms. A preventive suspension cannot simply be a term interruption because the suspended official continues to stay in office although he is barred from exercising the functions and prerogatives of the office within the suspension period. The best indicator of the suspended officials continuity in office is the absence of a permanent replacement and the lack of the authority to appoint one since no vacancy exists (*Aldovino v. COMELEC*, G.R. No. 184836, December 23, 2009).

Hold-over

In the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold office until his successor is elected or appointed and has qualified (*Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999).

Term limits of elective officers

1. President – Six years, without re-election;
2. Vice President – Six years, with one re-election if consecutive;
3. Senators – six years, with one re-election if consecutive;
4. Representative – three years, with two re-elections if consecutive; and
5. Local Executive Officials – three years, with two re-elections if consecutive, in the same position



ADMINISTRATIVE LAW	Classifications:	
GENERAL PRINCIPLES	As to Source	
<p>Administrative Law</p> <p>It is a branch of public law fixing the organization and determinesthe competence of administrative authorities, and indicates the individual remedies for the violation of the rights[<i>Administrative Code, Sec. 2(3)</i>].</p> <p>GR:The Revised Administrative Code is the principal text that governs this branch of law. The Code, however, does not cover the military as long as it deals with purely military affairs. They are governed by the Articles of War.</p> <p>XPN: If it deals with their relationship with the Civilians, still governed by the Administrative Code.</p> <p>Other institutions excluded:</p> <ol style="list-style-type: none"> 1. Board of Pardons and Parole; 2. State Universities and Colleges; and 3. Highly Urbanized Cities. <p>Administration</p> <ol style="list-style-type: none"> 1. <i>As an institution</i>–It refers to the aggregate of individuals in who’s hands the reins of government are for the time being. It refers to the persons who actually run the government during their prescribed terms of office. 2. <i>As a function</i> –It pertains to the actual running of the government by the executive authorities through the enforcement of laws and the implementation of policies. <p>Scope:</p> <ol style="list-style-type: none"> 1. Fixes the administrative operation and structure of the government; 2. Executes or enforces that which is entrusted to administrative authorities (all those public officers and organs of the government charged with the amplification, application and execution of the law); 3. Governs public officers and creates administrative officers; 4. Provides remedies to those aggrieved by these agencies; 5. Governs Judicial Review; 6. Includes rules, regulation, orders and decisions made by administrative authorities; and 7. Includes the body of judicial doctrines on any of the above. 	<p><i>Law that controls administrative authorities</i></p>	<p><i>Law made by the administrative authorities</i></p>
	<p>Constitution, statutes, judicial decisions, Executive Orders, Administrative Orders, etc.</p>	<p>General regulations and particular determinations; constitute under delegations of power embodied in statutory administrative law, and imposing and constantly expanding body of law.</p>
	As to Purpose	
	<p><i>Adjective or Procedural Administrative Law</i></p>	<p><i>Substantive Administrative Law</i></p>
	<p>Establishes the procedure which an agency must or may follow in the pursuit of its legal purpose.</p>	<p>Derived from same sources but contents are different in that the law establishes primary rights and duties.</p>
	As to Applicability	
	<p><i>General Administrative Law</i></p>	<p><i>Special/ Particular Administrative Law</i></p>
	<p>Part that is of general nature and common to all, or most, administrative agencies; chiefly but not exclusively procedural law.</p>	<p>Part that pertains to particular service; proceeds from the particular statute creating the individual agency.</p>
	Kinds:	
	<ol style="list-style-type: none"> 1. Statutes setting up administrative authorities; 2. Body of doctrines and decisions dealing with the creation, operation, and effect of determinations and regulations of such administrative authorities; 3. Rules, regulations, or orders of such administrative authorities in pursuance of the purposes, for which administrative authorities were created or endowed; and 	

e.g. Omnibus Rules Implementing the Labor Code, circulars of Central Monetary Authority.

4. Determinations, decisions, and orders of such administrative authorities in the settlement of controversies arising in their particular field.

e.g. Awards of NLRC with respect to money claims of employees.

ADMINISTRATIVE AGENCIES

DEFINITION

It is an organ of government, other than a court and the legislature, which affects the rights of private parties either through adjudication or rule making.

Interpretation of the powers of the administrative agencies

Administrative agencies have powers and functions which may be administrative, investigatory, regulatory, *quasi*-legislative, or *quasi*-judicial or mix of the five, as may be conferred by the constitution or by the statute. They have in fine only such powers or authority as are granted or delegated, expressly or impliedly, by law. And in determining whether an agency has certain powers, the inquiry should be from the law itself. But once ascertained as existing, the authority given should be liberally construed (*Soriano v. MTRCB*, G.R. No. 165785, April 29, 2009).

Instrumentality

It refers "to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds and enjoying operational autonomy, usually through a charter. It includes regulatory agencies, chartered institutions and government-owned or controlled corporations." (*United Residents of Dominican Hills v. Commission on the Settlement of Land Problems*, G.R. No. 135945, March 7, 2001).

Agency

It refers to any of the various units of the government, including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein (*Administrative Code*, Sec.2).

Department

An executive department created by law [*Administrative Code of 1987*, Sec. 2(7)].

Bureau

It is any principal subdivision or unit of any department. [*Administrative Code*, Sec. 2(8)]

Office

It refers to any major functional unit of a department or bureau including regional offices. It may also refer to any position held or occupied by individual persons, whose functions are defined by law or regulation [*Administrative Code*, Sec. 2(9)].

MANNER OF CREATION

Creation and abolition of office

The creation and abolition of public offices is primarily a legislative function (*Eugenio v. CSC*, G.R. No. 115863, March 31, 1995). However, the President may abolish an office either from a valid delegation from Congress, or his inherent duty to faithfully execute the laws (*Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010).

Manner of creation

1. Constitutional provision
2. Authority of law
3. Legislative enactment

Reasons for the creation of administrative agencies

1. Help unclog court dockets;
2. Meet the growing complexities of modern society; and
3. Help in the regulation of ramified activities of a developing country.

Elements of a valid abolition of office

1. In good faith (good faith is presumed);
2. Not for political or personal reasons; and
3. Not in violation of law.

NOTE: The Congress has the right to abolish an office even during the term for which an existing incumbent may have been elected EXCEPT when restrained by the Constitution.

Reorganization

Reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by



reason of economy or redundancy of functions. It alters the existing structure of government offices or the units therein, including the lines of control, authority and responsibility between them to make the bureaucracy more responsive to the needs of the public clientele as authorized by law (*Pan v. Pena G.R. No. 174244, Feb. 13, 2009*).

Circumstances that may be considered as evidence of bad faith in a removal pursuant to reorganization, thus warranting reinstatement or reappointment

1. Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
2. Where an office is abolished and other performing substantially the same functions is created;
3. Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
4. Where there is reclassification of offices in the department or agency concerned and the classified offices perform substantially the same function as the original offices; and
5. Where the removal violates the order of separation provided in Sec. 3 of R.A. 6656 (*Cotiangco v. Province of Biliran, G.R. No. 157139, October 19, 2011*).

Q: President Aquino signed E.O. No. 1 establishing the Philippine Truth Commission of 2010 (PTC), an ad hoc body with the primary task to investigate reports of graft and corruption. Biraogo asserts that the PTC is a public office and not merely an adjunct body of the Office of the President. Thus, in order that the President may create a public office he must be empowered by the Constitution, a statute or an authorization vested in him by law. He claims that Sec 31 of the Administrative Code of 1987, granting the President the continuing authority to reorganize his office, cannot serve as basis for the creation of a truth commission considering the aforesaid provision merely uses verbs such as reorganize, transfer, consolidate, merge, and abolish. Insofar as it vests in the President the plenary power to reorganize the Office of the President to the extent of creating a public office, Sec. 31 is inconsistent with the principle of separation of powers enshrined in the Constitution and must be deemed repealed upon the effectivity thereof. Does the creation of the PTC fall within the ambit of the power to reorganize as expressed in Sec. 31 of the Revised Administrative Code?

A: NO. Reorganization refers to the reduction of personnel, consolidation of offices, or abolition

thereof by reason of economy or redundancy of functions. This refers to situations where a body or an office is already existent but a modification or alteration thereof has to be effected. The creation of an office is nowhere mentioned, much less envisioned in said provision. To say that the PTC is borne out of a restructuring of the Office of the President under Sec. 31 is a misplaced supposition, even in the plainest meaning attributable to the term 'restructure' and 'alteration of an existing structure.' Evidently, the PTC was not part of the structure of the Office of the President prior to the enactment of E.O. 1 (*The Philippine Truth Commission of 2010 v. Lagman, G.R. No. 192935, December 7, 2010*).

Q: Is the creation of the PTC justified by the President's power of control?

A: NO. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws (*Cotiangco v. Province of Biliran, G.R. No. 157139, October 19, 2011*).

Q: What then could be the justification for the President's creation of the PTC?

A: The creation of the PTC finds justification under Sec. 17, Art. VII of the Constitution imposing upon the President the duty to ensure that the laws are faithfully executed. The President's power to conduct investigations to aid him in ensuring the faithful execution of laws – in this case, fundamental laws on public accountability and transparency – is inherent in the President's powers as the Chief Executive. That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean that he is bereft of such authority.

The Executive is given much leeway in ensuring that our laws are faithfully executed. The powers of the President are not limited to those specific powers under the Constitution. One of the recognized powers of the President granted pursuant to this constitutionally-mandated duty is the power to create *ad hoc* committees. This flows from the obvious need to ascertain facts and determine if the laws have been faithfully executed. It should be stressed that the purpose of allowing *ad hoc*



investigating bodies to exist is to allow an inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land (*Cotiangco v. Province of Biliran, supra.*).

NOTE: The SC, however, declared the creation of PTC as unconstitutional for violating the equal protection clause.

KINDS

Kinds of administrative bodies or agencies according to their purpose

1. Those created to function in situations where the government offers gratuity, grant, or special privilege
e.g., GSIS, SSS, PAO
2. Those set up to function in situations where the government seeks to carry on certain functions of government
e.g., BIR, BOC, BOI
3. Those set up in situations where the government performs business service for the public
e.g., PNR, MWSS, NFA, NHA
4. Those set up to function in situations where the government seeks to regulate businesses imbued with public interest
e.g., Insurance Commission, LTFRB, NTC
5. Those set up to function in situations where the government seeks under the police power to regulate private businesses and individuals
e.g., SEC, MTRCB
6. Those agencies set up to function in situations where the government seeks to adjust individual controversies because of strong social policy involved
e.g., NLRC, ECC, SEC

POWERS OF ADMINISTRATIVE AGENCIES

Administrative power or function

Involves the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature or such as are devolved upon the administrative agency by the organic law of its existence (*In re: Rodolfo U. Manzano, A.M. No. 88-7-1861-RTC, October 5, 1988*).

Powers of administrative agencies

1. *Discretionary* – The law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed; and
2. *Ministerial* – One which is as clear and specific as to leave no room for the exercise of discretion in its performance.

Basic powers of administrative agencies

1. *Quasi-legislative* power or rule-making power;
2. *Quasi-judicial* or adjudicatory power; and
3. Determinative power.

Quasi-legislative vs. Quasi-judicial power

QUASI-LEGISLATIVE	QUASI-JUDICIAL
Operates on the future.	Operates based on past facts.
General application.	Particular application (applies only to the parties involved).
May be assailed in court without subscribing to the Doctrine of Exhaustion of Administrative Remedies (DEAR) .	Only be challenged in court with prior exhaustion of administrative remedies.
Does not require prior notice and hearing (except when the law requires it).	Requires prior notice and hearing (except when the law does not require it).
May be assailed in court through an ordinary action.	Appealed to the Court of Appeals via petition for review (<i>Rule 43</i>).

Non-similarity of functions and powers of administrative agencies

Not all administrative agencies perform the same functions or exercise the types of powers. While some act merely as investigative or advisory bodies, most administrative agencies have investigative, rule-making, and determinative functions, or at least two of such functions.

QUASI-LEGISLATIVE (RULE-MAKING) POWER

Quasi-legislative power/Rule-Making



The exercise of delegated legislative power, involving no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of a policy set out in the law itself.

Legislative vs. Quasi-legislative power

LEGISLATIVE	QUASI-LEGISLATIVE
Determine <i>what</i> the law shall be	Determine <i>how</i> the law shall be enforced.
Cannot be delegated.	Can be delegated.

Limitations to the exercise of quasi-legislative power

1. Within the limits of the powers granted to administrative agencies;
2. Cannot make rules or regulations which are inconsistent with the provision of the Constitution or statute;
3. Cannot defeat the purpose of the statute;
4. May not amend, alter, modify, supplant, enlarge, or limit the terms of the statute;
5. A rule or regulation must be uniform in operation, reasonable and not unfair or discriminatory.

Administrative rule

Any agency statement of general applicability, which implements or interprets a law fixes and describes procedures in, or practice requirements of, an agency, including its regulations. The term includes memoranda or statements concerning the internal administration or management of an agency not affecting the rights of, or procedure available to the public [*Administrative Code of 1987, Sec. 2 (2)*].

Source of the power to promulgate administrative rules and regulations

Derived from the legislature, by virtue of a valid delegation, either express or implied.

Doctrine of Subordinate Legislation

Power of administrative agency to promulgate rules and regulations on matters within their own specialization.

Reason behind the delegation

It is well established in this jurisdiction that, while the making of laws is a non-delegable activity that corresponds exclusively to Congress, nevertheless the latter may constitutionally delegate authority to promulgate rules and regulations to implement a

given legislation and effectuate its policies, for the reason that the legislature often finds it impracticable (if not impossible) to anticipate and provide for the multifarious and complex situations that may be met in carrying the law into effect. All that is required is that:

- (1) The regulation should be germane to the objects and purposes of the law; and
- (2) That the regulation be not in contradiction with it, but conforms to the standards that the law prescribes (*People of the Philippines v. Exconde, G.R. No. L-9820, August 30, 1957*).

Q: Respondent was an operator of a domestic air carrier primarily that of transporting live fish from Palawan to fish traders. Petitioner is the government agency responsible for the governance, implementation, and policy direction of the Strategic Environment Plan (SEP) for Palawan pursuant to which Administrative Order No. 00-05 was issued. Said Order provided that only accredited domestic air carriers shall be allowed to operate as 'common carriers' licensed under said rule. Respondent assails the validity of A. O. No. 00-05 on the ground that it was issued in excess of petitioner's authority as an administrative agency. Was respondent's contention valid?

A: NO. Petitioner's issuance of the assailed order was well within its statutory authority. Administrative agencies possess two kinds of powers, the *quasi*-legislative or rule-making power, and the *quasi*-judicial or administrative adjudicatory power. The *first* is the power to make rules and regulations resulting from a valid delegated legislation that is within the confines of the granting statute and in accord with the doctrine of non-delegability and separability of powers. The *second* is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. Petitioner had the explicit authority to fill in the details as to how to carry out or effectively implement the objectives of R.A. No. 7611 in protecting and enhancing Palawan's natural resources consistent with the SEP. In fact, the petitioner was expressly given the authority to impose penalties and sanctions in relation to the implementation of the SEP and the other provisions of R.A. No. 7611 (*The Palawan Council for Sustainable Development v. Ejercito Lim, G.R. No. 183173, August 24, 2016*).

Non-applicability of notice and hearing in the issuance of an administrative rule or regulation



GR: An administrative body need not comply with the requirements of notice and hearing, in the performance of its executive or legislative functions, such as issuing rules and regulations (*Corona v. United Harbor Pilots Association of the Philippines*, G.R. No. 111963, December 12, 1997).

XPNS: The legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation (*Hon. Executive Secretary v. Southwing Heavy Industries, Inc.*, G.R. No. 164171, August 22, 2006).

The administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed (*CIR v. CA*, G.R. No. 11976, August 26, 1996).

Filing of copies of administrative rules and regulations before the UPLC

Each agency must file with the Office of the National Administrative Register (ONAR) of the University of the Philippines Law Center three certified copies of every rule adopted by it. Administrative issuances which are not published or filed with the ONAR are *ineffective* and may not be enforced (*Administrative Code of 198, Sec. 3; GMA v. MTRCB*, G.R. No. 148579, February 5, 2007).

Publication requirement

Required as a *condition precedent* to the effectivity of a law to inform the public of the contents of the law or rules and regulations before their rights and interests are affected by the same (*Philippine International Trading Corporation v. COA*, G.R. No. 132593, June 25, 1999).

NOTE: If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule [1987 *Administrative Code*, *Administrative Procedure*, Sec. 9(1)] (**2000, 2009 Bar**).

Exceptions to the requirement of publication

1. Interpretative regulations;
2. Internal regulations; and
3. Letters of instructions (*Tañada v. Tuvera* G.R. No. L-63915, December 29, 1986).

Effectivity of administrative rules

GR: Administrative rules take effect depending on the date provided by it.

XPN: If the administrative rule is silent on the matter of its date of effectivity, it shall take effect after 15 days following the completion of their publication.

Penal sanctions in administrative rules and regulations

Requisites to be complied with:

1. Law must declare the act punishable;
2. Law must define the penalty; and
3. Rules must be published in the Official Gazette or in a newspaper of general circulation (*Hon. Secretary Perez v. LPG Refillers Association of the Philippines*, G.R. No. 159149, June 26, 2006).

Authority of Administrative Officers to Interpret the Law

Tasked to implement the law and authorized to interpret it because they have the expertise to do so.

Contemporaneous Construction

The construction placed upon the statute by an executive or administrative officer called upon to execute or administer such statute.

Usually in the form of circulars, directives, opinions, and rulings.

Effect of Administrative Interpretations to Courts

They are not binding upon the courts. However, they are given great weight unless such construction is clearly shown to be in sharp contrast with the governing law of the state (*Nestle Philippines Inc. v. CA*, G.R. No. 86738, November 13, 1991).

KINDS OF ADMINISTRATIVE RULES AND REGULATIONS

1. Supplementary or detailed legislation;
2. Interpretative legislation;
3. Contingent legislation- Issued upon the happening of a certain contingency which the administrative body is given the discretion to determine;
4. Procedural;
5. Internal; and
6. Penal.

Administrative issuances according to their nature and substance:

1. Legislative Rule – It is in the matter of subordinate legislation, designed to implement a primary legislation by providing the details thereof; and



2. Interpretative rule – Provides guidelines to the law which the administrative agency is in charge of enforcing (*BPI Leasing v. CA, G.R. No. 127624, November 18, 2003*).

REQUISITES FOR VALIDITY

Requisites for a valid delegation of quasi-legislative or rule-making power

1. Completeness Test - The statute is complete in itself, setting forth the policy to be executed by the agency; and
2. Sufficient Standard Test - Statute fixes a standard, mapping out the boundaries of the agency's authority to which it must conform.

It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented (*ABAKADA Guro Party List v. Purisima, G.R. No. 166715, August 14, 2008*).

The administrative body may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute (*Dagan v. Philippine Racing Commission G.R. No. 175220, February 12, 2009*).

QUASI-JUDICIAL (ADJUDICATORY) POWER

Quasi-judicial power

Power of administrative authorities to make determinations of facts in the performance of their official duties and to apply the law as they construe it to the facts so found. It partakes the nature of judicial power, but exercised by a person other than a judge.

Limited jurisdiction of quasi-judicial agencies

An administrative body could wield only such powers as are specifically granted to it by its enabling statute. Its jurisdiction is interpreted *strictissimi juris*.

Conditions for the Proper Exercise of Quasi-Judicial Power

1. Jurisdiction must be properly acquired by the administrative body; and
2. Due process must be observed in the conduct of the proceedings.

Classifications of Adjudicatory Powers

1. *Enabling powers* – Permits the doing of an act which the law undertakes to regulate and which would be unlawful without governmental orders. It is characterized by the grant or denial of permit or authorization.
e.g., Issuance of licenses to engage in a particular business.
2. *Directing powers* – Orders the doing or performing of particular acts to ensure the compliance with the law and are often exercised for corrective purposes.
e.g., public utility commissions, powers of assessment under the revenue laws, reparations under public utility laws, and awards under workmen's compensation laws, and powers of abstract determination such as definition-valuation, classification and fact finding
3. *Dispensing powers* – Exemplified by the authority to exempt from or relax a general prohibition, or authority to relieve from an affirmative duty. Its difference from licensing power is that dispensing power sanctions a deviation from a standard.
4. *Summary powers* – Apply compulsion or force against person or property to effectuate a legal purpose without a judicial warrant to authorize such action.
e.g., Abatement of nuisance, summary restraint, levy of property of delinquent taxpayers
5. *Equitable powers* – The power to determine the law upon a particular state of facts that has the right to, and must, consider and make proper application of the rules of equity.
e.g., Power to appoint a receiver, power to issue injunctions
6. *Examining power s*– This is also called as *investigatory power*. Requires production of books, papers, etc., and the attendance of witnesses and compelling the testimony.

ADMINISTRATIVE DUE PROCESS

Nature of administrative proceedings

It is summary in nature.

Inapplicability of technical rules of procedure and evidence in administrative proceedings

The technical rules of procedure and of evidence prevailing in courts of law and equity are not controlling in administrative proceedings to free administrative boards or agencies from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate an administrative order.

Cardinal requirements of due process in administrative proceedings (1994 Bar)

1. Right to a hearing which includes the right to present one's case and submit evidence in support thereof;
2. The tribunal must consider the evidence presented;
3. The decision must be supported by evidence;
4. Such evidence must be substantial;
5. The decision must be rendered on the evidence presented at the hearing or at least contained in the record, and disclosed to the parties affected;
6. The tribunal or body or any of its judges must act on its own independent consideration of the law and facts of the controversy in arriving at a decision;
7. The board or body should render decision in such a manner that parties can know the various issues involved and the reasons for the decision rendered (*Ang Tibay v. CIR, G.R. No. L-46496, February 27, 1940*).

NOTE: The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. What is offensive to due process is the denial of the opportunity to be heard (*Flores v. Montemayor, G.R. No. 170146, June 6, 2011*).

Effect of non-observance of notice and hearing

As a rule, it will invalidate the administrative proceedings. A failure to comply with the requirements may result in a failure to acquire jurisdiction.

NOTE: Right to notice may be waived.

Necessity of Notice and Hearing

A hearing may take place after the deprivation occurs. What the law prohibits is not the absence of previous notice but the absolute absence thereof and the lack of opportunity to be heard.

NOTE: There has been no denial of due process if any irregularity in the premature issuance of the assailed decision has been remedied by an order giving the petitioners the right to participate in the hearing of the MR. The opportunity granted by, technically, allowing petitioners to finally be able to file their comment in the case, resolves the procedural irregularity previously inflicted upon petitioners (*Nascore v. ERC, G.R. No. 190795, July 6, 2011*).

Exceptions to the requirement of notice and hearing

1. Urgency of immediate action;
2. Tentativeness of administrative action;
3. Grant or revocation of licenses or permits to operate certain businesses affecting public order or morals;
4. Summary abatement of nuisance *per se* which affects safety of persons or property;
5. Preventive suspension of public officer or employee facing administrative charges;
6. Cancellation of a passport of a person sought for criminal prosecution;
7. Summary proceedings of distraint and levy upon property of a delinquent taxpayer;
8. Replacement of a temporary or acting appointee; and
9. Right was previously offered but not claimed.

Inapplicability of the right to counsel in administrative inquiries

The right to counsel which may not be waived, unless in writing and in the presence of counsel, as recognized by the Constitution, is a right of a suspect in a custodial investigation. It is not an absolute right and may, thus, be invoked or rejected in criminal proceeding and, with more reason, in an administrative inquiry (*Lumiqued v. Exevea, G.R. No. 117565, November 18, 1997*).

Quantum of proof required in administrative proceedings

Substantial evidence – that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

ADMINISTRATIVE APPEAL AND REVIEW

Administrative appeal

It includes the review by a higher agency of decisions rendered by an administrative agency, commenced by petition of an interested party.

NOTE: Under the 1987 Administrative Code, administrative appeals from a decision of an agency are taken to the Department Head, unless such appeal is governed by a special law.

Administrative review

A superior officer or department head, upon his or her own volition, may review the decision of an administrative agency or that of a subordinate's decision pursuant to the power of control.

It is, however, subject to the caveat that a final and executory decision is not included within the power



of control, and hence can no longer be altered by administrative review.

Different kinds of administrative appeal and review

1. Inheres in the relation of administrative superior to administrative subordinate;
2. Statutes which provide for determination to be made by a particular officer or body subject to appeal, review or redetermination by another officer or body in the same agency or in the same administrative system;
3. The statute makes or attempts to make a court a part of the administrative scheme by providing in terms or effect that the court, on review of the action of an administrative agency;
4. The statute provides that an order made by a division of a commission or board has the same force and effect as if made by the subject to a rehearing by the commission;
5. The statute provides for an appeal to an officer on an appeal to the head of the department or agency;
6. Statutes which provide for appeal at the highest level namely, the president (*De Leon, Administrative Law: Text and Cases (2010) page 311.*)

Enforcement of Administrative Decisions

1. As provided for by law; or
2. Through the court's intervention.

ADMINISTRATIVE RES JUDICATA

Non-applicability of the doctrine of *res judicata*

The doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings and not to the exercise of purely administrative functions. Administrative proceedings are non-litigious and summary in nature; hence, *res judicata* does not apply (*Nasipit Lumber Company, Inc. v. NLRC, G.R. No. 54424, August 31, 1989*).

Exceptions to the Non-Applicability of *Res Judicata* in Administrative Proceedings

1. Naturalization proceedings or those involving citizenship and immigration;
2. Labor relations; and
3. Decisions affecting family relations, personal status or condition, and capacity of persons.

NOTE: It is well settled that findings of fact of quasi-judicial agencies, such as the COA, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their

jurisdiction (*Reyna v. COA, G.R. No. 167219, February 8, 2011*).

FACT-FINDING, INVESTIGATIVE, LICENSING AND RATE-FIXING POWERS

Fact-finding power

- a. Power to declare the existence of facts which call into operation the provisions of a statute; and
- b. Power to ascertain and determine appropriate facts as a basis for procedure in the enforcement of particular laws.

NOTE: The mere fact that an officer is required by law to inquire the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be does not affect private rights do not constitute an exercise of judicial powers (*Lovina v. Moreno, G.R. No. L-17821, November 21, 1963*).

Exceptions to the rule that findings of facts of administrative agencies are binding on the courts

1. Findings are vitiated by fraud, imposition, or collusion;
2. Procedure which led to factual findings is irregular;
3. Palpable errors are committed;
4. Factual findings not supported by evidence;
5. Grave abuse of discretion, arbitrariness, or capriciousness is manifest;
6. When expressly allowed by statute; and
7. Error in appreciation of the pleadings and in the interpretation of the documentary evidence presented by the parties.

Fact-finding quasi-judicial body

A fact-finding quasi-judicial body (e.g., Land Transportation Franchising and Regulatory Board) whose decisions (on questions regarding certificate of public convenience) are influenced not only by the facts as disclosed by the evidence in the case before it but also by the reports of its field agents and inspectors that are periodically submitted to it, has the power to take into consideration the result of its own observation and investigation of the matter submitted to it for decision, in connection with other evidence presented at the hearing of the case (*Pantranco South Express, Inc. v. Board of Transportation, G.R. No. L-49664, November 22, 1990*).

Investigatory power

Power to inspect, secure, or require the disclosure of information by means of accounts, records, reports,



statements and testimony of witnesses. It is implied and not inherent in administrative agencies.

Power to issue subpoena not inherent in administrative bodies

It is settled that these bodies may summon witnesses and require the production of evidence only when duly allowed by law, and always only in connection with the matter they are authorized to investigate.

Power to cite a person in contempt not inherent in administrative bodies

It must be expressly conferred upon the body, and additionally, must be used only in connection with its *quasi*-judicial as distinguished from its purely administrative or routinary functions.

NOTE: If there is no express grant, the agency must invoke the aid of the RTC under Rule 71 of the Rules of Court.

Q: May administrative agencies issue warrants of arrest or administrative searches?

A: GR: NO. Under the 1987 Constitution, only a judge may issue warrants.

XPN: In cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner of Bureau of Immigration and Deportation may order arrested following a final order of deportation(*Salazar v. Achacoso*, G.R. No. 81510, March 14, 1990).

Licensing power

The action of an administrative agency in granting or denying, or in suspending or revoking, a license, permit, franchise, or certificate of public convenience and necessity.

License

Includes the whole or any part of any agency's permit, certificate, passport, clearance, approval, registration, charter, membership, statutory exemption or other form of permission, or regulation of the exercise of a right or privilege[1987 *Administrative Code, Administrative Procedure, Sec. 2(10)*].

Licensing

It includes agency process involving the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification or

conditioning of a license.[1987 *Administrative Code, Administrative Procedure, Sec. 2(11)*].

NOTE: Except in cases of willful violation of pertinent laws, rules and regulations or when public security, health, or safety requires otherwise, no license may be withdrawn, suspended, revoked or annulled without notice and hearing[1987 *Administrative Code, Administrative Procedure, Sec. 17(2)*].

Nature of an administrative agency's act if it is empowered by a statute to revoke a license for non-compliance or violation of agency regulations

Where a statute empowers an agency to revoke a license for non-compliance with or violation of agency regulations, the administrative act is of a judicial nature, since it depends upon the ascertainment of the existence of certain past or present facts upon which a decision is to be made and rights and liabilities determined.

Rate

It means any charge to the public for a service open to all and upon the same terms, including individual or joint rates, tolls, classification or schedules thereof, as well as communication, mileage, kilometrage and other special rates which shall be imposed by law or regulation to be observed and followed by a person[1987 *Administrative Code, Administrative Procedure, Sec. 2(3)*].

Rate-fixing power

It is the power usually delegated by the legislature to administrative agencies for the latter to fix the rates which public utility companies may charge the public.

NOTE: The power to fix rates is essentially legislative but may be delegated(*Philippine Inter-Island v. CA*, G.R. No. 100481, January 22, 1997).

The legislature may directly provide for these rates, wages, or prices. But while the legislature may deal directly with these subjects, it has been found more advantageous to place the performance of these functions in some administrative agency. The need for dispatch, for flexibility and technical know-how is better met by entrusting the rate-fixing to an agency other than the legislature itself(*Cortes*, 1963).

Rate-fixing procedure

The administrative agencies perform this function either by issuing rules and regulations in the exercise of their *quasi*-legislative power or by



issuing orders affecting a specified person in the exercise of its *quasi-judicial* power.

NOTE: In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the first hearing thereon[1987 *Administrative Code, Administrative Procedure, Sec. 9(2)*](2000, 2009 Bar).

Requirements for the delegation of the power to ascertain facts to be valid

The law delegating the power to determine some facts or state of things upon which the law may take effect or its operation suspended must provide the standard, fix the limits within which the discretion may be exercised, and define the conditions therefor. Absent these requirements, the law and the rules issued thereunder are void, the former being an undue delegation of legislative power and the latter being the exercise of rule-making without legal basis(*U.S. v. Ang Tang Ho, G.R. No. L-17122, February 27, 1992*).

Standard required on delegated power to fix rates

It is required that the rate be reasonable and just(*American Tobacco Co. v. Director of Patents, G.R. No. L-26803, October 14, 1975*).

In any case, the rates must both be non-confiscatory and must have been established in the manner prescribed by the legislature. Even in the absence of an express requirement as to reasonableness, this standard may be implied. A rate-fixing order, though temporary or provisional it may be, is not exempt from the procedural requirements of notice and hearing when prescribed by statute, as well as the requirement of reasonableness(*Philippine Communications Satellite Corporation v. NTC, G.R. No. 84818, December 18, 1989*).

Re-delegating power to fix rates is prohibited

The power delegated to an administrative agency to fix rates cannot, in the absence of a law authorizing it, be delegated to another. This is expressed in the maxim, *potestas delegata non delegari potest* (*Kilusang Mayo Uno Labor Center v. Garcia, Jr., G.R. No. 115381, December 23, 1994*).

POWER TO FIX RATES EXERCISED AS A LEGISLATIVE FUNCTION	POWER TO FIX RATE EXERCISED AS A QUASI-JUDICIAL FUNCTION
Rules and/or rates laid down are meant to apply to all enterprises.	Rules and the rate imposed apply exclusively to a particular party.
Prior notice and hearing to the affected parties is not a requirement, except where the legislature itself requires it.	Prior notice and hearing are essential to the validity of such rates. But an administrative agency may be empowered by law to approve provisionally, when demanded by urgent public need, rates of public utilities without a hearing.

JUDICIAL RECOURSE AND REVIEW

Judicial review

It involves the re-examination or determination by the courts in the exercise of their judicial power in an appropriate case instituted by a party aggrieved thereby as to whether the questioned act, rule, or decision has been validly or invalidly issued or whether the same should be nullified, affirmed or modified.

NOTE: The mere silence of the law does not necessarily imply that judicial review is unavailable.

Requisites of judicial review of administrative action

1. *Principle of finality of administrative action* - Administrative action must have been completed; and
2. *Principle of exhaustion of administrative remedies* - Administrative remedies must have been exhausted.

Limitations on judicial review

1. Final and executory decisions cannot be made the subject of judicial review;
2. Administrative acts involving a political question are beyond judicial review, *except* when there is an allegation that there has been grave abuse of discretion; and
3. Courts are generally bound by the findings of fact of an administrative agency.



NOTE: Courts will not render a decree in advance of administrative action. Such action would be rendered nugatory.

It is not for the court to stop an administrative officer from performing his statutory duty for fear that he will perform it wrongly.

Q: Orais filed with the Office of the Ombudsman a Complaint for corruption and grave misconduct against his superior, Dr. Almirante, for the anomalies committed using her position as Veterinary Quarantine Officer-Seaport. The Office of the Ombudsman ruled in favor of Almirante and it ordered that the case be dismissed for lack of substantial basis. The CA held that decisions of the Ombudsman in cases absolving the respondent of the charge are deemed final and unappealable, pursuant to the Rules of Procedure of the Office of the Ombudsman. Is the CA correct?

A: YES. Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one-month salary, the Ombudsman's decision shall be final, executory, and unappealable. However, these decisions of administrative agencies by law are still "subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings." However, the exception does not apply in this case (*Orais v. Almirante, G.R. No. 181195, June 10, 2013*).

Doctrine of Ripeness for Review (2001 Bar)

It is similar to that of exhaustion of administrative remedies except that it applies to the rule-making power and to administrative action which is embodied neither in rules and regulations nor in adjudication or final order.

Purpose of the Doctrine of Ripeness of Review

1. To prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies; and
2. To protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties (*Abbott Laboratories v. Gardner, 387 U.S. 136, 1967*).

Application of the Doctrine of Ripeness of Review

1. When the interest of the plaintiff is subjected to or imminently threatened with substantial injury;
2. If the statute is self-executing;
3. When a party is immediately confronted with the problem of complying or violating a statute and there is a risk of criminal penalties; or
4. When plaintiff is harmed by the vagueness of the statute.

Two tests to determine whether or not a controversy is ripe for adjudication

1. Fitness of the issue for judicial decision; and
2. Hardship to the parties of withholding court consideration (*Abbott Laboratories v. Gardner, ibid.*).

Questions reviewable by the courts

1. *Questions of fact*

GR: Courts will not disturb the findings of administrative agencies acting within the parameters of their own competence, special knowledge, expertise, and experience. The courts ordinarily accord respect if not finality to factual findings of administrative tribunals.

XPN: If findings are not supported by substantial evidence.

2. *Questions of Law* – Administrative decisions may be appealed to the courts independently of legislative permission. It may be appealed even against legislative prohibition because the judiciary cannot be deprived of its inherent power to review all decisions on questions of law.
3. *Mixed (law and fact)* – When there is a mixed question of law and fact and the court cannot separate the elements to see clearly what and where the mistake of law is, such question is treated as question of fact for purposes of review and the courts will not ordinarily review the decision of the administrative tribunal.

DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION

Doctrine of Primary Jurisdiction or Doctrine of Prior Resort (1996 Bar)

Under the principle of primary jurisdiction, courts cannot or will not determine a controversy involving question within the jurisdiction of an administrative body prior to the decision of that question by the administrative tribunal where the:



1. Question demands administrative determination requiring special knowledge, experience and services of the administrative tribunal;
2. Question requires determination of technical and intricate issues of a fact;
3. Uniformity of ruling is essential to comply with purposes of the regulatory statute administered

NOTE: In such instances, relief must first be obtained in administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. The judicial process is accordingly suspended pending referral of the claim to the administrative agency for its view.

Rationale:

1. To take full advantage of administrative expertness; and
2. To attain uniformity of application of regulatory laws which can be secured only if determination of the issue is left to the administrative body.

Instances where the doctrine finds no application

1. By the court's determination, the legislature did not intend that the issues be left solely to the initial determination of the administrative body;
2. The issues involve purely questions of law; and
3. Courts and administrative bodies have concurrent jurisdiction.

Exceptions to the Doctrine of Primary Jurisdiction

1. Where there is estoppel on the part of the party invoking the doctrine;
2. Where the challenged administrative act is patently illegal, amounting to lack of jurisdiction;
3. Where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant;
4. Where the amount involved is relatively small so as to make the rule impractical and oppressive;
5. Where the question involved is purely legal and will ultimately have to be decided by the courts of justice;
6. Where judicial intervention is urgent;
7. When its application may cause great and irreparable damage;
8. Where the controverted acts violate due process;

9. When the issue of non-exhaustion of administrative remedies has been rendered moot;
10. When there is no other plain, speedy and adequate remedy;
11. When strong public interest is involved; and
12. In quo warranto proceedings(*The Province of Aklan v. Jody King Construction and Development Corp.*, G.R. Nos. 197592 & 202623, November 27, 2013).

Raising the issue of primary jurisdiction

The court may *motu proprio* raise the issue of primary jurisdiction and its invocation cannot be waived by the failure of the parties to argue it, as the doctrine exists for the proper distribution of power between judicial and administrative bodies and not for the convenience of the parties. In such case the court may:

1. Suspend the judicial process pending referral of such issues to the administrative body for its review; or
2. If the parties would not be unfairly disadvantaged, dismiss the case without prejudice(*Euro-Med Laboratories Phil. v. Province of Batangas*, G.R. No. 148106, July 17, 2006).

Applicability of the Doctrine of Primary Jurisdiction

In recent years, it has been the jurisprudential trend to apply this doctrine to cases involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in character. It applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view(*Villaflor v. Court of Appeals*, G.R. No. 95694, October 9, 1997).

Q: A civil case for the collection of sum of money was filed by X Company against the province of Batangas before the RTC. After the petitioner's presentation of evidence, the province of Batangas moved for the dismissal of the case on the ground that it is the Commission on Audit which has primary jurisdiction over the matter for it involves transactions with the province which was governed by the Local Government Code provisions and COA rules and regulations on supply and property management in local



governments. Is the contention of the province of Batangas correct?

A: YES. It is the COA and not the RTC which has primary jurisdiction to pass upon petitioner's money claim against respondent local government unit. Such jurisdiction may not be waived by the parties' failure to argue the issue nor active participation in the proceedings. The doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction. It applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice (*Euro-Med Laboratories Phil. Inc. v. Province of Batangas*, G.R. No. 148106, July 17, 2006).

Q: Petitioner university contracted the services of Stern Builders Corporation for the construction and renovation of its buildings in UP Los Banos. In an action filed by Stern Builder against petitioner, the RTC rendered a favorable judgment and granted the motion for execution filed therewith by Stern Builders. Consequently, the sheriff served notices of garnishment on the petitioner's depository banks. Petitioner filed an urgent motion to quash the notices of garnishment; and a motion to quash the writ of execution on the ground that government funds and properties could not be seized by virtue of writs of execution or garnishment except in pursuance of an appropriation law or other specific statutory authority. However RTC, through respondent Judge, authorized the release of the garnished funds of the UP. CA upheld RTC's judgment and the issuance of the writ of garnishment of petitioner's funds. Was the appellate court correct in sustaining RTC's jurisdiction to issue the writ of garnishment against petitioner?

A: NO. The CA erred in ruling that Petitioner's funds could be the proper subject of a writ of execution or garnishment. The settlement of the monetary claim was still subject to the primary jurisdiction of the COA despite the final decision of the RTC having already validated the claim. The funds of Petitioner are government funds that are public in character,

including any interest accruing from the deposit of such funds in any banking institution, which constitute a "special trust fund," the disbursement of which should always be subject to auditing by the COA. As such, the private claimants had no alternative except to first seek the approval of the COA of their monetary claim. Trial judges should not immediately issue writs of execution or garnishment against the Government or any of its subdivisions, agencies and instrumentalities to enforce money judgments. It is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines which pertains to COA's primary jurisdiction to examine, audit and settle all claims of any sort due from the Government or any of its subdivisions, agencies and instrumentalities. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and in effect, sue the State thereby (*University of the Philippines v. Dizon*, G.R. No. 171182, August 23, 2012).

DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of Exhaustion of Administrative Remedies (1996, 1998, 2000, 2015 Bar)

It calls for resorting first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction and must first be appealed to the administrative superiors up to the highest level before the same may be elevated to the courts of justice for review.

Premature invocation of court intervention is fatal to one's cause of action. Exhaustion of administrative remedies is a prerequisite for judicial review; it is a *condition precedent* which must be complied with.

Rationale:

1. To enable the administrative superiors to correct the errors committed by their subordinates;
2. Courts should refrain from disturbing the findings of administrative bodies in deference to the doctrine of separation of powers;
3. Courts should not be saddled with the review of administrative cases;
4. Judicial review of administrative cases is usually effected through special civil actions which are available only if there is no other plain, speedy, and adequate remedy;



5. To avail of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies;

Exceptions to the application of the doctrine (1991, 2000, 2004 Bar)

1. Violation of due process;
2. When there is estoppel on the part of the administrative agency concerned;
3. When the issue involved is a purely legal question;
4. When there is irreparable injury;
5. When the administrative action is patently illegal amounting to lack or excess of jurisdiction;
6. When the respondent is a Department Secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;
7. When the subject matter is a private land case proceedings;
8. When it would be unreasonable;
9. When no administrative review is provided by law;
10. When the rule does not provide a plain, speedy, and adequate remedy;
11. When the issue of non-exhaustion of administrative remedies has been rendered moot;
12. When there are circumstances indicating the urgency of judicial intervention;
13. When it would amount to a nullification of a claim; and
14. Where the rule on qualified political agency applies

(*Laguna CATV Network v. Maraon*, G.R. No. 139492, November 19, 2002).

Effect of non-exhaustion of administrative remedies

Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the Court. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can take cognizance of the case and try it (*Republic v. Sandiganbayan*, G.R. Nos. 112708-09, March 29, 1996).

Effect of non-compliance

Non-compliance with the doctrine of primary jurisdiction or doctrine of exhaustion of administrative remedies is not jurisdictional for the defect may be waived by a failure to assert the same at the earliest opportune time.

Q: Alicia Water District (ALWAD), a GOCC that operates water utility services conducted public hearing for the purpose of increasing the water rate. They subsequently received a letter from the Local Water Utilities Administration (LWUA) confirming the proposed water rates. ALWAD issued a resolution implementing the water rate increase of P90 for the first ten cubic meters of water consumption. Because of this, consumers filed a Petition for Injunction against the petitioner before the RTC alleging that ALWAD violated LOI 700 by implementing a rate increase greater than 60% of current rate and failing to conduct public hearing for the imposed rate of P90. ALWAD filed a Motion to Dismiss for failure to exhaust administrative remedy under PD 198 as amended. One of the respondents then questioned the legality of the water rate increase before the National Water Resources Board (NWRB). RTC denied ALWAD's Motion to Dismiss. On appeal, CA affirmed the RTC. Does RTC have jurisdiction over the matter?

A: YES. The failure to exhaust administrative remedy does not affect the RTC's jurisdiction. Non-exhaustion of administrative remedies only renders the action premature, that the cause of action is not ripe for judicial determination. It is incumbent upon the party who has an administrative remedy to pursue the same to its appropriate conclusion before seeking judicial intervention. Although the doctrine of exhaustion does not preclude in all cases a party from seeking judicial relief, cases where its observance has been disregarded require a strong showing of the inadequacy of the prescribed procedure and of impending harm (*Merida Water District v. Bacarro*, G.R. No. 165993, September 30, 2008).

Q: Deputy Ombudsman Katerina Sanchez was dismissed by the Office of the President on the ground of betrayal of public trust and a disciplinary proceeding against Special Prosecutor Miranda Ramos is pending before the OP. For this reason, Sanchez and Ramos challenged the constitutionality of Section 8(2) of R.A. 6770 or The Ombudsman Act of 1989 regarding the president's disciplinary jurisdiction over a deputy ombudsman and a special prosecutor. The Supreme Court rendered its decision upholding the constitutionality of the said law and ordered the reinstatement of Sanchez. As regards Ramos, the Court ruled that the disciplinary proceeding against her should be continued because Section 8(2) of R.A. No. 6770 is not unconstitutional. Only the OP, through the OSG moved for the reconsideration of the Court's ruling. What then is the effect of



the absence of motion for reconsideration on the part of Sanchez and Ramos?

A: NONE. The omission of the filing of a motion for reconsideration poses no obstacle for the Court's review of its ruling on the whole case since a serious constitutional question has been raised and is one of the underlying bases for the validity or invalidity of the presidential action. If the President does not have any constitutional authority to discipline a Deputy Ombudsman and/or a Special Prosecutor in the first place, then any ruling on the legal correctness of the OP's decision on the merits will be an empty one. In other words, since the validity of the OP's decision on the merits of the dismissal is inextricably anchored on the final and correct ruling on the constitutional issue, the whole case – including the constitutional issue – remains alive for the Court's consideration on motion for reconsideration (*Emilio A. Gonzales III v. Office of the President/Wendell Bareras-Sulit v. Atty. Paquito N. Ochoa, Jr.*, G.R. No. 196231/G.R. No. 196232, January 28, 2014).

Doctrine of Primary Jurisdiction vs. Doctrine of Exhaustion of Administrative Remedies

DOCTRINE OF PRIMARY JURISDICTION	DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES
Both deal with the proper relationships between the courts and administrative agencies.	
Case is within the concurrent jurisdiction of the court and an administrative agency but the determination of the case requires the technical expertise of the administrative agency.	Claim is cognizable in the first instance by an administrative agency alone.
Although the matter is within the jurisdiction of the court, it must yield to the jurisdiction of the administrative agency.	Judicial interference is withheld until the administrative process has been completed.

NOTE: The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact (*Republic v. Lacap*, G.R. No. 158253, March 2, 2007).

DOCTRINE OF FINALITY OF ADMINISTRATIVE ACTION

It provides that no resort to courts will be allowed unless administrative action has been completed and there is nothing left to be done in the administrative structure.

Instances where the doctrine finds no application

1. Grant of relief to preserve the *status quo* pending further action by the administrative agency;
2. Essential to the protection of the rights asserted from the injuries threatened;
3. Administrative officer assumes to act in violation of the Constitution and other laws;
4. Order is not reviewable in any other way and the complainant will suffer great and obvious damage if the order is carried out;
5. Interlocutory order affects the merits of a controversy;
6. Order made in excess of power, contrary to specific prohibition in the statute governing the agency and thus operating as a deprivation of a right assured by the statute; and
7. When review is allowed by statutory provisions.

NOTE: Appeal to the CA is allowed because a *quasi-judicial* agency is equivalent in rank with the RTC (*Rules of Court*, Rule 43).



POLITICAL LAW

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FUNDAMENTAL POWERS OF THE STATE

PET

1. Police Power
2. Power of Eminent Domain
3. Power of Taxation

Similarities among the fundamental powers of the State

1. They are inherent in the State and may be exercised by it without need of express constitutional grant;
2. They are not only necessary but also indispensable. The State cannot continue or be effective unless it is able to exercise them;
3. They are methods by which the State interferes with private rights;
4. They all presuppose an equivalent compensation for the private rights interfered with; and
5. They are exercised primarily by the legislature.

Common limitations on these powers

1. May not be exercised arbitrarily to the prejudice of the Bill of Rights; and
2. Subject at all times to the limitations and requirements of the Constitution and may in proper cases be annulled by the courts, *i.e.* when there is grave abuse of discretion.

Police Power vs. Taxation vs. Eminent Domain

BASIS	POLICE POWER	TAXATION	EMINENT DOMAIN
<i>Extent of power</i>	Regulates liberty and property	Affects only property rights	
<i>Power exercised by whom</i>	Exercised only by the government		Maybe exercised by private entities
<i>Nature of the property taken</i>	Property is noxious or intended for a noxious purpose	Property is wholesome	

<i>Purpose as to property taken</i>	Property taken is destroyed	Property is taken for public use	
<i>Compensation</i>	Intangible altruistic feeling that one has contributed to the public good/general welfare	Protection and public improvements	Fair market value of the property expropriated

Exercise of the fundamental powers of the state

GR: The inherent powers are to be exercised by the legislature.

XPN: These powers may be delegated to: **(PALQ)**

- a. President;
- b. Administrative Agencies;
- c. Local Government Units; and
- d. Quasi-Public Corporation (private corporations which perform a public function or render public service. *e.g.* Meralco).

NOTE: ONLY Eminent Domain may be delegated to quasi-public corporations.

Local government units do not have inherent powers

They are mere creatures of Congress. Whatever powers they have are implied from their delegated powers. Police Power and Eminent Domain may be delegated to LGU and the delegation may be found in their respective charter (*Batangas CATV, Inc. vs. CA, G.R. No. 138810, September 29, 2004*).

NOTE: It is the Constitution itself which delegated the power of Taxation to LGUs. The delegation is found in Sec. 5, Art. 10.

General Welfare Clause

The delegation of police power to the LGU (*R.A. 7160 or the Local Government Code of 1991, Sec. 16*).

POLICE POWER (1990, 1992, 2001, 2004, 2007, 2009, 2010 Bar)

Police power is the power of the state to promote public welfare by restraining and regulating the use



of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic uteretur alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility of its patrons (*Gerochi v. Department of Energy*, G. R. 159796, July 17, 2007).

Police power rests upon public necessity and upon the right of the State and of the public to self-protection. For this reason, its scope expands and contracts with the changing needs (*Churchill v. Rafferty*, 32 Phil. 580, 602-603, December 21, 1915).

Police power of the State is a power coextensive with self-protection, and is aptly termed the law of overruling necessity (*Rubi v. Provincial Board*, G.R. No. L-14078, March 7, 1919).

Generally, police power extends to all the great public needs. Its particular aspects, however, are the following:

1. Public health;
2. Public morals;
3. Public safety; and
4. Public welfare.

Requisites for a valid exercise of police power

1. *Lawful subject* – The interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and
2. *Lawful means* – The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals (*NTC v. Philippine Veterans Bank*, 192 SCRA 257, December 10, 1990).

Q: Hotel and motel operators in Manila sought to declare Ordinance 4670 as unconstitutional for being unreasonable, thus violative of the due process clause. The Ordinance requires the clients of hotels, motels and lodging house to fill out a prescribed form in a lobby, open to public view and in the presence of the owner, manager or duly authorized representative of such hotel, motel or lodging house. The same law provides

that the premises and facilities of such hotels, motels and lodging houses would be open for inspection either by the City Mayor, or the Chief of Police, or their duly authorized representatives. It increased their annual license fees as well. Is the ordinance constitutional?

A: YES. The mantle of protection associated with the due process guaranty does not cover the hotel and motel operators. This particular manifestation of a police power measure being specifically aimed to safeguard public morals is immune from such imputation of nullity resting purely on conjecture and unsupported by anything of substance. To hold otherwise would be to unduly restrict and narrow the scope of police power which has been properly characterized as the most essential, insistent and the least limitable of powers, extending as it does "to all the great public needs." There is no question that the challenged ordinance was precisely enacted to minimize certain practices hurtful to public morals. The challenged ordinance then proposes to check the clandestine harboring of transients and guests of these establishments by requiring these transients and guests to fill up a registration form, prepared for the purpose, in a lobby open to public view at all times, and by introducing several other amendatory provisions calculated to shatter the privacy that characterizes the registration of transients and guests. Moreover, the increase in the licensed fees was intended to discourage "establishments of the kind from operating for purpose other than legal" and at the same time, to increase "the income of the city government" (*Ermita-Malate Hotel v. City Mayor of Manila*, G.R. No. L-24693, July 31, 1967).

Q: The City of Manila enacted Ordinance No. 7774 entitled, "An Ordinance Prohibiting Short-Time Admission, Short-Time Admission Rates, and Wash-Up Rate Schemes in Hotels, Motels, Inns, Lodging Houses, Pension Houses, and Similar Establishments in the City of Manila." The purpose of the ordinance is to prohibit motel and inn operators from offering short-time admission, as well as pro-rated or "wash-up" rates for abbreviated stays. Is the ordinance a valid exercise of police power?

A: NO. A reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded. It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. In the present case, there is less intrusive measures which can be employed such



as curbing out the prostitution and drug use through active police force. The ordinance has a lawful purpose but does not have the lawful means hence, unconstitutional (*White Light Corporation vs. City of Manila*, G.R. No. 122846, January 20, 2009).

Q: Are the rates to be charged by utilities like MERALCO subject to State regulation?

A: YES. The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. As long as use of the property is continued, the same is subject to public regulation (*Republic v. Manila Electric Company*, G.R. No. 141314, November 15, 2002).

NOTE: Mall owners and operators cannot be validly compelled to provide free parking to their customers because requiring them to provide free parking space to their customers is beyond the scope of police powers. It unreasonably restricts the right to use property for business purposes and amounts to confiscation of property (*OSG v. Ayala Land, Inc.*, 600 SCRA 617, September 18, 2009). **(2014 Bar)**

Requisites for the valid exercise of police power by the delegate

1. Express grant by law;
2. Must not be contrary to law; and
3. **GR:** Within territorial limits of LGUs.
XPN: When exercised to protect water supply (*Wilson v. City of Mountain Lake Terraces*, 417 P.2d 632, August 18, 1966).

The courts cannot interfere with the exercise of police power

If the legislature decides to act, the choice of measures or remedies lies within its exclusive discretion, as long as the requisites for a valid exercise of police power have been complied with.

Q: Can MMDA exercise police power?

A: NO. The MMDA cannot exercise police powers since its powers are limited to the formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of

policies, installing a system, and administration. Nothing in RA No. 7924 granted the MMDA police power, let alone legislative power (*MMDA v. Trackworks*, G.R. No. 179554, December 16, 2009).

EMINENT DOMAIN

Power of eminent domain (1990, 1993, 1996, 1998, 2000, 2001, 2003, 2004, 2008 Bar)

The power of eminent domain is the inherent right of the State to condemn private property to public use upon payment of just compensation.

The power of the nation or the sovereign state to take, or to authorize the taking of private property for public use without the owner's consent, conditioned upon payment of just compensation (*Brgy. Sindalan, San Fernando, Pampanga v. CA*, G.R. No. 150640, March 22, 2007).

Conditions for the exercise of the Power of Eminent Domain (TUCO)

1. Taking of private property;
2. For public Use;
3. Just Compensation; and
4. Observance of due process.

NOTE: There must be a valid offer to buy the property and refusal of said offer.

Power of expropriation as exercised by Congress vs. Power of expropriation as exercised by delegates

	Power of expropriation as exercised by Congress	Power of expropriation as exercised by delegates
Scope	The power is pervasive and all-encompassing; It can reach every form of property which may be needed by the State for public use. In fact, it can reach even private property already dedicated to public	It can only be broad as the enabling law and the conferring authorities want it to be.



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	use, or even property already devoted to religious worship (<i>Barlin v. Ramirez</i> , 7 Phil. 41, November 24, 1906).	
Question of necessity	Political question	Judicial question (The courts can determine whether there is genuine necessity for its exercise, as well as the value of the property).

Requisites for a valid taking

1. The expropriator must enter a private property;
2. Entry must be for more than a momentary period;
3. Entry must be under warrant or color of legal authority;
4. Property must be devoted to public use or otherwise informally appropriated or injuriously affected; and
5. Utilization of property must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property (*Republic v. De Castellvi*, G.R. No. L-20620, August 15, 1974).

Nature of property taken

GR: All private property capable of ownership, including services, can be taken.

XPNS:

- a. Money; and
- b. *Choses* in action - personal right not reduced in possession but recoverable by a suit at law such as right to receive, demand or recover debt, demand or damages on a cause of action *ex contractu* or for a tort or omission of duty.

NOTE: A *chose* in action is a property right in something intangible, or which is not in one's possession but enforceable through legal or court action *e.g. cash, a right of action in tort or breach of contract, an entitlement to cash refund, checks, money, salaries, insurance claims.*

Eminent Domain vs. Destruction from necessity

BASIS	EMINENT DOMAIN	DESTRUCTION FROM NECESSITY
Who can exercise	Only authorized public entities or public officials.	May be validly undertaken by private individuals.
Kind of right	Public right	Right of self-defense, self-preservation, whether applied to persons or to property.
Requirement	Conversion of property taken for public use; payment of just compensation.	No need for conversion; no just compensation but payment in the form of damages when applicable.
Beneficiary	State/public	Private

Eminent Domain vs. Action for Damages

BASIS	EMINENT DOMAIN	ACTION FOR DAMAGES
Source	Arises from the State's exercise of its power to expropriate private property for public use. The Constitution mandates that the property owner shall only receive just compensation which, of course, should be based on preponderance of evidence.	Based on tort and emanates from the transgression of a right.
Purpose	For public interest	To vindicate a legal wrong through damages, which may be actual, moral, nominal, temperate, liquidated, or exemplary.

(*Republic v. Mupas*, G.R. No. 181892, September 8, 2015)



Requisites before an LGU can exercise Eminent Domain

1. An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the LGU, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property;
2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless;
3. There is payment of just compensation; and
4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted (*Municipality of Paranaque v. V.M. Realty Corp.*, 292 SCRA 678, July 20, 1998).

EXPANSIVE CONCEPT OF "PUBLIC USE"

Expansive concept of "Public Use"

Public use does not necessarily mean "use by the public at large." Whatever may be beneficially employed for the general welfare satisfies the requirement. Moreover, that only few people benefit from the expropriation does not diminish its public-use character because the notion of public use now includes the broader notion of indirect public benefit or advantage (*Manosca v. CA*, G.R. 166440, January 29, 1996).

Concept of Vicarious Benefit

Abandons the traditional concept (number of actual beneficiaries determines public purpose). Public use now includes the broader notion of indirect public advantage, i.e. conversion of a slum area into a model housing community, urban land reform and housing. There is a vicarious advantage to the society (*Filstream International Incorporated v. CA*, 284 SCRA 716, January 23, 1998).

Q: The Republic, through the Office of the Solicitor-General, instituted a complaint for expropriation of a piece of land in Taguig, alleging that the National Historical Institute declared said land as a national historical landmark, because it was the site of the birth of Felix Manalo, the founder of Ilesiani Cristo. The Republic filed an action to expropriate the land. Petitioners argued that the expropriation was not for a public purpose. Is this correct?

A: YES. Public use should not be restricted to the traditional uses. It has been held that places invested with unusual historical interest is a public

use for which the power of eminent domain may be authorized. The purpose in setting up the marker is essentially to recognize the distinctive contribution of the late Felix Manalo to the culture of the Philippines, rather than to commemorate his founding and leadership of the Iglesia ni Cristo. The practical reality that greater benefit may be derived by members of the Iglesia ni Cristo than by most others could well be true but such a peculiar advantage still remains to be merely incidental and secondary in nature. Indeed, that only a few would actually benefit from the expropriation of property does not necessarily diminish the essence and character of public use (*Manosca v. CA*, *supra*).

JUST COMPENSATION

It is the full and fair equivalent of the property taken from the private owner (owner's loss) by the expropriator. It is usually the fair market value (FMV) of the property and must include consequential damages (damages to the other interest of the owner attributed to the expropriation) minus consequential benefits (increase in the value of other interests attributed to new use of the former property).

NOTE: To be just, the compensation must be paid on time. **(2009 Bar)**

Fair Market Value

The price that may be agreed upon by parties who are willing but are not compelled to enter into a contract of sale (*City of Manila v. Estrada*, G.R. No. 7749, September 9, 1913).

Formula for Just Compensation

Just Compensation = actual/basic value of the property

+ consequential damages

- consequential benefits

(which should not exceed the consequential damages)

Period to determine just compensation

GR: Reckoning point is determined at the *date of the filing of the complaint* for eminent domain.

XPN: Where the filing of the complaint occurs after the actual taking of the property and the owner



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would be given undue incremental advantages arising from the use to which the government devotes the property expropriated, just compensation is determined as of the *date of the taking* (*NPC v. CA, G.R. No. 113194, March 11, 1996*).

Consequential Damages

Consist of injuries directly caused on the residue of the private property taken by reason of expropriation (*Cruz and Cruz, Constitutional Law, 2015 Ed.*).

Q: Spouses Salvador owns a land where a one-storey building is erected. The said land is subject to expropriation wherein the DPWH shall construct the NLEX extension exiting McArthur Highway. DPWH paid the spouses amounting to P685,000 which was the fair market value of the land and building. RTC issued a Writ of Possession in favor of the Republic but decided to pay an additional amount corresponding to the capital gains tax paid by the spouses. The Republic, represented by DPWH contested the decision of the RTC adding the capital gains tax as consequential damages on the part of the Spouse Salvador. Is the decision of the RTC correct?

A:NO. Just compensation is defined as the full and fair equivalent of the property sought to be expropriated. The measure is not the taker's gain but the owner's loss. The compensation, to be just, must be fair not only to the owner but also to the taker. Consequential damages are only awarded if *as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value*. In this case, no evidence was submitted to prove any impairment or decrease in value of the subject property as a result of the expropriation. More significantly, given that the payment of capital gains tax on the transfer of the subject property has no effect on the increase or decrease in value of the remaining property, it can hardly be considered as consequential damages that may be awarded to respondents (*Republic v. Sps. Salvador, G.R. No. 205428, June 7, 2017*).

Consequential Benefits

If the remainder is as a result of the expropriation placed in a better location, such as fronting a street where it used to be an interior lot, the owner will enjoy consequential benefits which should be deducted from the consequential damages (*Cruz, Constitutional Law, 2007 ed., p. 79*).

NOTE: If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the

property should be paid in every case (*Rule 67, Section 6, Rules of Court*).

Form of payment

GR: Compensation has to be paid in money.

XPN: In cases involving CARP, compensation may be in bonds or stocks, for it has been held as a non-traditional exercise of the power of eminent domain. It is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. It is rather a revolutionary kind of expropriation (*Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989*).

NOTE: The owner is entitled to the payment of interest from the time of taking until just compensation is actually paid to him. Taxes paid by him from the time of the taking until the transfer of title (which can only be done after actual payment of just compensation), during which he did not enjoy any beneficial use of the property, are reimbursable by the expropriator.

An interest of 12% per annum on the just compensation due the landowner should be used in computing interest (*Land Bank of the Philippines v. Wycoco, G.R. No. 140160, January 13, 2004*).

Pursuant to BangkoSentral ng Pilipinas Circular No. 799, series of 2013, from July 1, 2013 onwards and until full payment, an interest rate of 6% per annum should be used in computing the just compensation (*Land Bank of the Philippines v. Hababag, G.R. No. 172352, September 16, 2015*).

NOTE: The right to recover just compensation is enshrined in no less than our Bill of Rights, which states in clear and categorical language that private property shall not be taken for public use without just compensation. This constitutional mandate **cannot be defeated by statutory prescription** (*NPC v. Sps. Bernardo, G. R. No. 189127, April 25, 2012*). **(2014 Bar)**

DETERMINATION

Role of the Judiciary

While the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under the land reform and, accordingly, the just compensation therefor, its valuation is considered only as an initial determination and, thus, not conclusive. Verily, it is well-settled that it is the RTC, sitting as a Special Agrarian Court, which should make the final



determination of just compensation in the exercise of its judicial function (*Land Bank v. Lajom*, G.R. No. 184982, August 20, 2014).

The value of the property must be determined either at the time of taking or filing of the complaint, whichever comes first (*EPZA v. Dulay*, G.R. No. 59603, April 29, 1987).

In cases where a property is not wholly expropriated, the consequential damages of the remaining property shall be added in the fair market value, minus the consequential benefits, but in no case will the consequential benefits exceed the consequential damages (*Sec. 6, Rule 67, Rules of Court*).

EFFECT OF DELAY

GR: Non-payment by the government does not entitle private owners to recover possession of the property because expropriation is an *in rem* proceeding, not an ordinary sale, but only entitle them to demand payment of the fair market value of the property.

XPNS:

1. When there is deliberate refusal to pay just compensation; and
2. Government's failure to pay compensation within 5 years from the finality of the judgment in the expropriation proceedings. This is in connection with the principle that the government cannot keep the property and dishonor the judgment (*Republic v. Lim*, G.R. No. 161656, June 29, 2005).

ABANDONMENT OF INTENDED USE AND RIGHT OF REPURCHASE

Q: Several parcels of lands located in Lahug, Cebu City were the subject of expropriation proceedings filed by the Government for the expansion and improvement of the Lahug Airport. The RTC rendered judgment in favor of the Government and ordered the latter to pay the landowners the fair market value of the land. The landowners received the payment.

The other dissatisfied landowners appealed. Pending appeal, the Air Transportation Office (ATO), proposed a compromise settlement whereby the owners of the lots affected by the expropriation proceedings would either not appeal or withdraw their respective appeals in consideration of a commitment that the

expropriated lots would be resold at the price they were expropriated in the event that the ATO would abandon the Lahug Airport, pursuant to an established policy involving similar cases. Because of this promise, the landowners did not pursue their appeal. Thereafter, the lot was transferred and registered in the name of the Government. The projected improvement and expansion plan of the old Lahug Airport, however, was not pursued. From the date of the institution of the expropriation proceedings up to the present, the public purpose of the said expropriation (expansion of the airport) was never actually initiated, realized, or implemented.

Thus, the landowners initiated a complaint for the recovery of possession and reconveyance of ownership of the lands based on the compromised agreement they entered into with the ATO. Do the former owners have the right to redeem the property?

A: YES. It is well settled that the taking of private property by the Government's power of eminent domain is subject to two mandatory requirements: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake of the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain, namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owner's right to justice, fairness, and equity (*MIAA and Air Transportation Office v. Lozada*, G.R. No. 176625, February 25, 2010).

NOTE: To continue with the expropriation proceedings despite the definite cessation of the public purpose of the project would result in the rendition of an invalid judgment in favor of the expropriator due to the absence of the essential element of public use (*Republic v. Heirs of Borbon*, G.R. No. 165354, January 12, 2015).



BILL OF RIGHTS

MISCELLANEOUS APPLICATION

Q: The Philippine Press Institute, Inc. ("PPI") assails the validity of Resolution No. 2772 issued by COMELEC wherein the latter shall procure free print space in at least one newspaper of general circulation, any magazine or periodical in every province or city for use as "COMELEC Space" from March 6, 1995 in the case of candidates. Is the resolution valid?

A: NO. The taking of private property for public use is authorized by the Constitution, but not without payment of just compensation (Article III, Section 9). And apparently the necessity of paying compensation for "COMELEC space" is precisely what is sought to be avoided by the Commission. There is nothing at all to prevent newspaper and magazine publishers from voluntarily giving free print space to Comelec for the purposes contemplated in Resolution No. 2772. Section 2 of Resolution No. 2772 does not, however, provide a constitutional basis for compelling publishers, against their will to provide free print space for Comelec purposes. Section 2 does not constitute a valid exercise of the power of eminent domain (*Philippine Press Institute v. COMELEC*, G.R. No. 119694, May 22, 1995).

Q: Sec. 92 of the Omnibus Election Code provides that the Comelec shall procure radio and television time to be known as "Comelec Time" which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. Thus, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign. Is Sec. 92 of BP 881 valid?

A: YES. All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign. A franchise is thus a privilege subject, among other things, to amendment by Congress in accordance with the constitutional provision that "any such franchise or right granted shall be subject to amendment, alteration or repeal by the Congress when the common good so requires.

Radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the temporary privilege of using them. Since a franchise is a mere privilege, the exercise of the privilege may reasonably be burdened with the performance by the grantee of some form of public service

(*Telecommunications and Broadcast Attorneys of the Philippines v. COMELEC*, G.R. No. 132922, April 21, 1998).

PPI vs. COMELEC and TELEBAP vs. COMELEC

PPI vs. COMELEC	TELEBAP vs. COMELEC
Invalid; there is taking of property without just compensation.	There is no taking of public property because radio networks do not own the airwaves.
Print media incurred expenses for the use of papers.	Broadcast media does not incur expenses for using the airwaves.
Print media is limited in scope.	Broadcast media is very pervasive.

Q: An ordinance of Quezon City requires memorial park operators to set aside at least 6% of their cemetery for charity burial of deceased persons who are paupers and residents of Quezon City. The same ordinance also imposes fine or imprisonment and revocation of permit to operate in case of violation. Is this a valid exercise of police power?

A: NO. It constituted taking of property without just compensation. The power to regulate does not include the power to prohibit. The power to regulate does not include the power to confiscate. The ordinance in question not only confiscates but also prohibits the operation of a memorial park cemetery, because under Sec. 13 of said ordinance, 'Violation of the provision thereof is punishable with a fine and/or imprisonment and that upon conviction thereof the permit to operate and maintain a private cemetery shall be revoked or cancelled'. The confiscatory clause and the penal provision in effect deter one from operating a memorial park cemetery. Moreover, instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries (*City Government of Quezon City v. ERICTA*, G.R. No. L-34915, June 24, 1983).

Q: NPC negotiated with Maria for an easement of right of way over her property. NPC contends that they shall only pay easement fee, not just compensation. Is a right of way easement subject to expropriation?

A: YES. There can be expropriation in the right of way easement. Expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession — the right of way



easement resulting in a restriction of limitation on property right over the land traversed by transmission lines also falls within the ambit of the term expropriation (*NPC v. Maria Mendoza San Pedro, G.R. No. 170945 September 26, 2006*).

Q: Causby sued the United States for trespassing on his land, complaining specifically about how low-flying military planes caused his chickens to jump up against the side of the chicken house and the walls and burst themselves open and die. Are they entitled to compensation by reason of taking clause?

A: YES. There is taking by reason of the frequency and altitude of the flights. Flights of aircraft over private land which are so low and frequent as to be a direct and immediate interference with the enjoyment and use of the land are as much an appropriation of the use of the land as a more conventional entry upon it. If the flights over Causby's property rendered it uninhabitable, there would be a taking compensable under the Fifth Amendment. It is the owner's loss, not the taker's gain, which is the measure of the value of the property taken. Moreover, Causby could not use his land for any purpose (*US v. Causby, 328 U.S. 256, May 27, 1946*).

TAXATION

Taxes are:

1. Enforced proportional contributions from persons and property;
2. Levied by the State by virtue of its sovereignty;
3. For the support of the government; and
4. For public needs.

Taxation

It is the process by which the government, through its legislative branch, imposes and collects revenues to defray the necessary expenses of the government, and to be able to carry out, in particular, any and all projects that are supposed to be for the common good. Simply put, taxation is the method by which these contributions are exacted.

The power to tax includes the power to destroy only if it is used as a valid implement of the police power in discouraging and in effect, ultimately prohibiting certain things or enterprises inimical to public welfare. But where the power to tax is used solely for the purpose of raising revenues, the modern view is that it cannot be allowed to confiscate or destroy. If this is sought to be done, the tax may be

successfully attacked as an inordinate and unconstitutional exercise of the discretion that is usually vested exclusively in the legislature in ascertaining the amount of tax (*Roxas v. CTA, G.R. No. L-25043, April 26, 1968*).

NOTE: Payment of taxes is an obligation based on law, and not on contract. It is a duty imposed upon the individual by the mere fact of his membership in the body politic and his enjoyment of the benefits available from such membership. Except only in the case of poll (community) taxes, non-payment of a tax may be the subject of criminal prosecution and punishment. The accused cannot invoke the prohibition against imprisonment for debt, as taxes are not considered debts.

Scope of legislative discretion in the exercise of taxation

1. Whether to tax in the first place;
2. Whom or what to tax;
3. For what public purpose; and
4. Amount or rate of the tax.

General Limitations on the power of taxation

A. Inherent limitations

1. Public purpose;
2. Non-delegability of power;
3. Territoriality or situs of taxation;
4. Exemption of government from taxation; and
5. International comity.

B. Constitutional limitations

1. Due process of law (*Art. III, Sec.1*);
2. Equal protection clause (*Art. III, Sec.1*);
3. Uniformity, equitability and progressive system of taxation (*Art. VI, Sec.28*);
4. Non-impairment of contracts (*Art. III, Sec. 10*);
5. Non-imprisonment for non-payment of poll tax (*Art. III, Sec. 20*);
6. Revenue and tariff bills must originate in the House of Representatives (*Art IV, Sec. 24*);
7. Non-infringement of religious freedom (*Art. III, Sec.4*);
8. Delegation of legislative authority to the President to fix tariff rates, import and export quotas, tonnage and wharfage dues;
9. Tax exemption of properties actually, directly and exclusively used for religious, charitable and educational purposes (*NIRC, Sec 30*);
10. Majority vote of all the members of Congress required in case of legislative grant of tax exemptions;



11. Non-impairment of SC's jurisdiction in tax cases;
12. Tax exemption of revenues and assets of, including grants, endowments, donations or contributions to educational institutions (Art. VI of the 1987 Constitution, Sec. 28 [3]).

Notice and hearing in the enactment of tax laws

From the procedural viewpoint, due process does not require previous notice and hearing before a law prescribing fixed or specific taxes on certain articles may be enacted. But where the tax to be collected is to be based on the value of taxable property, the taxpayer is entitled to be notified of the assessment proceedings and to be heard therein on the correct valuation to be given the property.

Uniformity in taxation

It refers to geographical uniformity, meaning it operates with the same force and effect in every place where the subject of it is found.

Progressive system of taxation

It posits that the tax rate increases as the tax base increases.

Double taxation

It means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character (*City of Manila v. Coca-Cola Bottlers Philippines, G.R. No. 181845, August 4, 2009*).

Two tax laws or ordinances constitute Double Taxation when they tax: (PAPSJK)

1. For the same Purpose;
2. By the same taxing Authority;
3. For the same taxing Periods;
4. On the same Subject matter;
5. Within the same taxing Jurisdiction; and
6. Of the same Kind or character (*Swedish Match Philippines v. Treasurer of the City of Manila, G.R. No. 181277, July 3, 2013*).

NOTE: There is no provision in the Constitution specifically prohibiting double taxation, however, where there is direct duplicate taxation, there may be violation of the constitutional precepts of equal protection and uniformity in taxation.

Tax exemptions may either be

1. Constitutional; or

NOTE: Requisite for Constitutional exemption: actual, direct and exclusive use by educational and charitable institutions, and religious organizations [Sec. 28(3), Art. VI, 1987 Constitution].

2. Statutory.

NOTE: It has to be passed by majority of all the members of the Congress [Art. VI, 1987 Constitution, Sec. 28(4)].

Revocability of tax exemptions

1. Exemption is granted *gratuitously* – revocable; and
2. Exemption is granted *for valuable consideration* (non-impairment of contracts) – irrevocable.

Construction of tax laws

In case of doubt, tax statutes are to be construed strictly against the Government and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares (*CIR v. La Tondena, Inc. and CTA, 5 SCRA 665, July 31, 1962*).

Construction of laws granting tax exemptions

It must be strictly construed against the taxpayer, because the law frowns on exemption from taxation; hence, an exempting provision should be construed *strictissimi juris* (*Acting Commissioner of Customs v. Manila Electric Company, G.R. No. L-23623, June 30, 1977*).

Tax vs. License fee

TAX	LICENSE FEE
Levied in exercise of the taxing power.	Imposed in the exercise of the police power of the state.
The purpose of the	License fees are imposed for



tax is to generate revenues.	regulatory purposes which means that it must only be of sufficient amount to include expenses in issuing a license, cost of necessary inspection or police surveillance, etc.
Its primary purpose is to generate revenue, and regulation is merely incidental.	Regulation is the primary purpose. The fact that incidental revenue is also obtained does not make the imposition a tax.

NOTE: Ordinarily, license fees are in the nature of the exercise of police power because they are in the form of regulation by the State and considered as a manner of paying off administration costs. However, if the license fee is higher than the cost of regulating, then it becomes a form of taxation (*Ermita-Malate Hotel v. City Mayor of Manila*, G.R. No. L-24693, October 23, 1967).

Q: Can taxes be subject to off-setting or compensation?

A: NO. Taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. It must be noted that a distinguishing feature of tax is that it is compulsory rather than a matter of bargain. Hence, a tax does not depend upon the consent of the taxpayer (*Philex Mining Corp. v. CIR*, 294 SCRA 687, August 28, 1998).

PRIVATE ACTS AND THE BILL OF RIGHTS

Bill of Rights

Set of prescriptions setting forth the fundamental civil and political rights of the individual, and imposing limitations on the powers of government as a means of securing the enjoyment of those rights.

The Bill of Rights guarantee governs the relationship between the individual and the State. Its concern is not the relation between private individuals. What it does is to declare some forbidden zones in the private sphere inaccessible to any power holder (*People v. Marti*, G.R. No. 81561, January 18, 1991).

The Bill of Rights cannot be invoked against private individuals. In the absence of governmental interference, the liberties guaranteed by the Constitution cannot be invoked. Put differently, the Bill of Rights is not meant to be invoked against acts of private individuals (*Yrasegui v. PAL*, G.R. No. 168081, October 17, 2008).

NOTE: However, where the husband invoked his right to privacy of communication and correspondence against a private individual, his wife, who had forcibly taken from his cabinet documents and private correspondence, and presented as evidence against him, the Supreme Court held these papers are inadmissible in evidence, upholding the husband's right to privacy (*Zulueta v. CA*, G.R. No. 107383, February 20, 1996).

DUE PROCESS

Due process clause (1992, 1999, 2007, 2009 Bar)

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws (1987 Constitution, Art. III, Sec. 1).

Meaning of Person

All persons, whether citizens or aliens, without regard to any differences of race, religion, color or nationality, are protected under the due process clause. Private corporations legally existing within the Philippines are "persons" within the scope of the guarantee insofar as their property is concerned (*South Bell & Co. vs. Natividad*, G.R. No. 15574, September 17, 1919).

Meaning of Life

The right to life is not merely a right to the preservation of life but also to the security of the limbs and organs of the human body against any unlawful harm. This constitutional guarantee includes the right of an individual to pursue a lawful calling or occupation; to express, write or even paint his ideas for as long as he does not unlawfully transgress the rights of others; to exercise his freedom of choice, whether this is in the area of politics, religion, marriage, philosophy and employment, or even in the planning of his family; and in general, to do and perform any lawful act or activity which, in his judgment, will make his life worth living (*Suarez*, 2016).

Meaning of Liberty

It is not only the right of a citizen to be free from the mere physical restraint of his person, as by



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incarceration, but the term is deemed to embrace the right of the citizen to be free in the engagement of all his faculties; to be free to use them in all lawful ways (*Allegeyer vs. Louisiana*, 165 U.S. 578, January 6, 1897).

Meaning of Property

It refers to things which are susceptible of appropriation and which are already possessed and found in the possession of man (*Suarez*, 2016).

Due process means:

1. There shall be a law prescribed in harmony with the general powers of the legislature;
2. It shall be reasonable in its operation;
3. It shall be enforced according to the regular methods of procedure prescribed; and
4. It shall be applicable alike to all citizens of the State or to all of a class (*People v. Cayat*, G.R. No. L-45987, May 5, 1939).

Purpose

The due process clause is a guaranty against any kind of abuse and arbitrariness, by anyone in any of the branches of government. More specifically, the purpose of the due process clause is to:

1. Prevent undue encroachment against the life, liberty and property of individuals.
2. Secure the individual from the arbitrary exercise of powers of government, unrestrained by the established principles of private rights and distributive justice.
3. Protect property from confiscation by legislative enactments from seizure, forfeiture, and destruction without a trial and conviction by the ordinary modes of judicial procedures. (*Suarez*, 2016)

Kinds of due process

1. Procedural Due Process; and
2. Substantive Due Process.

RELATIVITY OF DUE PROCESS

Relativity of due process arises when the definition of due process has been left to the best judgment of our judiciary considering the peculiarity and the circumstances of each case. In a litany of cases that have been decided in this jurisdiction, the common requirement to be able to conform to due process is fair play, respect for justice and respect for the better rights of others. In accordance with the

standards of due process, any court at any particular time, will be well guided, instead of being merely confined strictly to a precise definition which may or may not apply in every case.

A determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action must be considered in determining the application of the rules of procedure (*Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, June 19, 1961).

To say that the concept of due process is flexible does not mean that judges are at large to apply it to any and all relationships. Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards for the same kind of procedure (*Morrisey v. Brewer*, 408 U.S. 471, June 29, 1972).

Due process in judicial proceedings

Whether in civil or criminal judicial proceedings, due process requires that there be:

1. An impartial and disinterested court clothed by law with authority to hear and determine the matter before it;

NOTE: The test of impartiality is whether the judge's intervention tends to prevent the proper presentation of the case or the ascertainment of the truth.

2. Jurisdiction lawfully acquired over the defendant or the property which is the subject matter of the proceeding;
3. Notice and opportunity to be heard be given to the defendant; and
4. Judgment to be rendered after lawful hearing, clearly explained as to the factual and legal bases (*Art. VII, 1987 Constitution, Sec. 14*).

Requisites of due process in administrative proceedings

(See discussion under Administrative Law, Administrative Due Process)

Administrative vs. Judicial due process

BASIS	ADMINISTRATIVE	JUDICIAL
<i>Essence</i>	Opportunity to	A day in court



	explain one's side	
Means	Usually through seeking a reconsideration of the ruling or the action taken, or appeal to a superior authority	Submission of pleadings and oral arguments
Notice and Hearing	Required when the administrative body is exercising quasi-judicial function (<i>PhilCom-Sat v. Alcuaz</i> , G.R. No. 84818, December 18, 1989).	Both are essential: 1. Notice 2. Hearing

NOTE: See further discussion of *Administrative Due Process under Administrative Law*.

Due process in academic and disciplinary proceedings

Parties are bound by the rules governing academic requirements and standards of behavior prescribed by the educational institutions. Resort to courts is available to parties (*Vivares and Suzara v. St. Theresa's College*, G.R. No. 202666, September 29, 2014).

Requisites of student discipline proceedings

Student discipline proceedings may be summary and cross-examination is not an essential part thereof. However, to be valid, the following requirements must be met:

1. Written notification sent to the student/s informing the nature and cause of any accusation against him/her;
2. Opportunity to answer the charges, with the assistance of a counsel, if so desired;
3. Presentation of one's evidence and examination of adverse evidence;
4. Evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case (*Guzman v. NU*, G.R. No. L-68288, July 11, 1986); and
5. The penalty imposed must be proportionate to the offense.

Due process in deportation proceedings

Although a deportation proceeding does not partake of the nature of a criminal action, however, considering that it is a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person, the constitutional right of such person to due process should not be denied. Thus, the provisions of the Rules of Court of the Philippines particularly on criminal procedure are applicable to deportation proceedings (*Lao Gi v. CA*, G.R. No. 81789, December 29, 1989).

Q: Scheer, a German, was granted permanent resident status in the country. In a letter, Vice Consul Hippelein informed the Philippine Ambassador to Germany that the respondent had police records and financial liabilities in Germany. The Board of Commissioners (BOC) thereafter issued a Summary Deportation Order. It relied on the correspondence from the German Vice Consul on its speculation that it was unlikely that the German Embassy will issue a new passport to the respondent; on the warrant of arrest issued by the District Court of Germany against the respondent for insurance fraud; and on the alleged illegal activities of the respondent in Palawan. The BOC concluded that the respondent was not only an undocumented but an undesirable alien as well. Is the Summary Deportation Order is valid?

A: NO. Section 37(c) of Commonwealth Act No. 613, as amended, provides that no alien shall be deported without being informed of the specific grounds for deportation or without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration. Under paragraphs 4 and 5 of Office Memorandum Order No. 34, an alien cannot be deported unless he is given a chance to be heard in a full deportation hearing, with the right to adduce evidence in his behalf. The respondent was not afforded any hearing at all. The BOC simply concluded that the respondent committed insurance fraud and illegal activities in Palawan without any evidence. The respondent was not afforded a chance to refute the charges. He cannot, thus, be arrested and deported without due process of law as required by the Bill of Rights of the Constitution (*Domingo v. Scheer*, G.R. No. 154745, January 29, 2004).

Instances when hearings are not necessary

1. When administrative agencies are exercising their *quasi*-legislative functions;
2. Abatement of nuisance *per se*;
3. Granting by courts of provisional remedies;
4. Cases of preventive suspension;



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5. Removal of temporary employees in the government service;
6. Issuance of warrants of distraint and/or levy by the BIR Commissioner;
7. Cancellation of the passport of a person charged with a crime; and
8. Suspension of a bank's operations by the Monetary Board upon a *prima facie* finding of liquidity problems in such bank.

Q: Ordinance 6537 of the City of Manila makes it unlawful for non-Filipino citizens to be employed or to be engaged in any kind of trade, business or occupation within the City of Manila, without securing an employment permit from the Mayor of Manila. Is the ordinance unconstitutional?

A: YES. The ordinance is unconstitutional. While it is true that the Philippines as a State is not obliged to admit aliens within its territory, once an alien is admitted, he cannot be deprived of life without due process of law. This guarantee includes the means of livelihood. The ordinance amounts to a denial of the basic right of the people of the Philippines to engage in the means of livelihood (*Mayor Villegas v. Hiu Ching Tsai Pao Hao, G.R. No. L-29646, November 10, 1978*).

PROCEDURAL AND SUBSTANTIVE DUE PROCESS

Procedural vs. Substantive due process

	SUBSTANTIVE DUE PROCESS	PROCEDURAL DUE PROCESS
Purpose	This serves as a restriction on the government's law and rule-making powers.	Serves as a restriction on actions of judicial and quasi-judicial agencies of the government.
Requisites	<ol style="list-style-type: none"> 1. The interests of the public in general, as distinguished from those of a particular class, require the intervention of the state. 2. The means employed are reasonably necessary for the accomplishment of the purpose and not unduly 	<ol style="list-style-type: none"> 1. Impartial court or tribunal clothed with judicial power to hear and determine the matters before it. 2. Jurisdiction properly acquired over the person of the defendant and over property which is the

	oppressive upon individuals.	subject matter of the proceeding.
		3. Opportunity to be heard.
		4. Judgment rendered upon lawful hearing and based on evidence adduced.

SUBSTANTIVE DUE PROCESS

Substantive due process

It requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property. If a law is invoked to take away one's life, liberty or property, the more specific concern of substantive due process is not to find out whether said law is being enforced in accordance with procedural formalities but whether the said law is a proper exercise of legislative power.

NOTE: Publication of laws is part of substantive due process. It is a rule of law that before a person may be bound by law, he must be officially and specifically informed of its contents. For the publication requirement, "laws" refer to all statutes, including those of local application and private laws. This does not cover internal regulations issued by administrative agencies, which are governed by the Local Government Code. Publication must be full, or there is none at all (*Tañada vs. Tuvera, G.R. No. L-63915, December 29, 1986*).

Q: The City of Manila enacted Ordinance 7783, which prohibited the establishment or operation of business "providing certain forms of amusement, entertainment, services and facilities where women are used as tools in entertainment and which tend to disturb the community, among the inhabitants and adversely affect the social and moral welfare of community." Owners and operators concerned were given three months to wind up their operations or to transfer to any place outside the Ermita-Malate area, or convert said business to other kinds of business which are allowed. Does the ordinance violate the due process clause?

A: YES. These lawful establishments may only be regulated. They cannot be prohibited from carrying on their business. This is a sweeping exercise of police power, which amounts to interference into personal and private rights which the court will not



countenance. There is a clear invasion of personal or property rights, personal in the case of those individuals desiring of owning, operating and patronizing those motels and property in terms of investments made and the salaries to be paid to those who are employed therein. If the City of Manila desired to put an end to prostitution, fornication, and other social ills, it can instead impose reasonable regulations such as daily inspections of the establishments for any violation of the conditions of their licenses or permits, it may exercise its authority to suspend or revoke their licenses for these violations; and it may even impose increased license fees (*City of Manila v. Laguio, Jr.*, GR. No. 118127, April 12, 2005).

PROCEDURAL DUE PROCESS

Procedural due process

Refers to the regular methods of procedure to be observed before one's life, liberty or property can be taken away from him. Simply stated, it means that the procedure to be observed must be fair. It is a guarantee to obtain a fair trial in a court of justice according to the mode of proceeding applicable to each case. This includes not only courts of justice but also any and all administrative boards, bodies or tribunals.

The fundamental elements of procedural due process

1. Notice (to be meaningful, must be as to time and place);
2. Opportunity to be heard; and
3. Court/tribunal must have jurisdiction.

Due process in extradition proceedings

(See Extradition section under Public International Law for discussion)

Q: A complaint was filed against respondent Camille Gonzales, then Chief Librarian, Catalog Division, of the National Library for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. The DECS investigating committee was created to inquire into the charges against Gonzales. Is she entitled to be informed of the findings and recommendations of the investigating committee?

A: NO. It must be stressed that the disputed investigation report is an internal communication between the DECS Secretary and the Investigation

Committee, and it is not generally intended for the perusal of respondent or any other person for that matter, except the DECS Secretary. She is entitled only to the administrative decision based on substantial evidence made of record, and a reasonable opportunity to meet the charges and the evidence presented against her during the hearings of the investigation committee (*Pefianco v. Moral*, GR. No. 132248, January 19, 2000).

Q: Cadet 1CL Cudia was a member of SiklabDiwa Class of 2014 of the PMA. Prof. Berong issued a Delinquency Report (DR) against Cadet 1CL Cudia because he was late for two minutes in his class. Cudia reasoned out that: "I came directly from OR432 Class. We were dismissed a bit late by our instructor Sir."

The Company Tactical Officer (CTO) of Cadet 1CL Cudia penalized him with demerits. Cudia addressed his Request for Reconsideration to his Senior Tactical Officer (STO), but the STO sustained the penalty. The CTO reported him to the PMA Honors Committee (HC) for violation of the Honor Code. When the members of the HC casted their votes through secret balloting, the result was 8-1 in favor of a guilty verdict. After further deliberation, the Presiding Officer announced the 9-0 guilty verdict. Cudia contested the dismissal as being violative of his right to due process.

Was the dismissal of Cudia a denial of his right to due process?

A: NO. Due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice; that the proceedings may be summary; that cross-examination is not an essential part of the investigation or hearing; and that the required proof in a student disciplinary action, which is an administrative case, is neither proof beyond reasonable doubt nor preponderance of evidence but only substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

What is crucial is that official action must meet minimum standards of fairness to the individual, which generally encompass the right of adequate notice and a meaningful opportunity to be heard.

It is not required that procedural due process be afforded at every stage of developing disciplinary action. What is required is that an adequate hearing be held before the final act of dismissal (*Cudia v.*



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Superintendent of the PMA, G.R. No. 211362, February 24, 2015).

CONSTITUTIONAL AND STATUTORY DUE PROCESS

Constitutional due process vs. Statutory due process

CONSTITUTIONAL DUE PROCESS	STATUTORY DUE PROCESS
Protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings.	While found in the Labor Code and Implementing Rules, it protects employees from being unjustly terminated without just cause after notice and hearing.

(*Agabon v. NLRC*, G.R. No. 158693, November 17, 2004)

NOTE: The Bill of rights is not meant to be invoked against acts of private individuals like employers. Private actions, no matter how egregious, cannot violate constitutional due process.

Effect when due process is not observed

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same (*Garcia v. Molina and Velasco*, G.R. Nos. 157383 and 174137, August 10, 2010).

Effect of Waiver or Estoppel

Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Thus, when the party seeking due process was in fact given several opportunities to be heard and air his side, but it is by his own fault or choice he squanders these chances, then his cry for due process must fail.

HIERARCHY OF RIGHTS

There is a hierarchy of constitutional rights. While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Property and property rights can be lost through prescription; but human rights are imprescriptible. In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions (*Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, G.R. No. L-31195, June 5, 1973). **(2012 Bar)**

The right to property may be subject to a greater degree of regulation but when this right is joined by a "liberty" interest, the burden of justification on the part of the Government must be exceptionally convincing and irrefutable (*Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992)

The freedom of expression is a "preferred" right and, therefore, stands on a higher level than substantive economic or other liberties. The primacy, the high estate accorded freedom of expression is a fundamental postulate of our constitutional system (*Gonzales v. COMELEC*, G.R. No. L-27833, April 18, 1969).

The constitutional right to the free exercise of one's religion has primacy and preference over union security measures which are merely contractual (*Victoriano v. Elizalde Rope Workers' Union*, G.R. No. L-25246, September 12, 1974).

JUDICIAL STANDARDS OF REVIEW

1. *Deferential review* – Laws are upheld if they rationally further a legitimate governmental interest, without courts seriously inquiring into the substantiality of such interest and examining the alternative means by which the objectives could be achieved.
2. *Intermediate review* – The substantiality of the governmental interest is seriously looked into and the availability of less restrictive alternatives is considered.
3. *Strict scrutiny* – The focus is on the presence of compelling, rather than substantial governmental interest and on the absence of less restrictive means for achieving that interest (*Separate opinion of Justice Mendoza in Estrada v. Sandiganbayan*, G.R. No. 148965, February 26, 2002).

NOTE: Given the fact that not all rights and freedoms or liberties under the Bill of Rights and



other values of society are of similar weight and importance, governmental regulations that affect them would have to be evaluated based on different yardsticks, or standards of review.

VOID-FOR-VAGUENESS DOCTRINE (2010, 2014 Bar)

A law is vague when it lacks comprehensive standards that men of common intelligence must necessarily guess at its common meaning and differ as to its application. In such instance, the statute is repugnant to the Constitution because:

1. It violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and
2. It leaves law enforcers an unbridled discretion in carrying out its provisions (*People v. de la Piedra*, G.R. No. 128777, January 24, 2001).

The "void-for-vagueness" doctrine does not apply as against legislations that are merely couched in imprecise language but which specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities.

The Supreme Court held that the doctrine can only be invoked against that species of legislation that is utterly vague on its face, i.e., that which cannot be clarified either by a saving clause or by construction (*Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001).

The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld - not absolute precision or mathematical exactitude (*Ibid.*).

NOTE: The void-for-vagueness doctrine cannot be used to impugn the validity of a criminal statute using "facial challenge" but it may be used to invalidate a criminal statute "as applied" to a particular defendant.

Q: Navotas City, City of Manila, and Quezon City started to strictly implement their respective curfew ordinances on minors through police

operations. Petitioners argue that the Curfew Ordinances are unconstitutional because they result in arbitrary and discriminatory enforcement as there are no clear provisions or detailed standards on how law enforcers should apprehend and properly determine the age of the alleged curfew violators, and thus, fall under the void for vagueness doctrine. Is the petitioners' contention proper?

A: NO. The void for vagueness doctrine is premised on due process considerations, which are absent from this particular claim. Petitioners fail to point out any ambiguous standard in any of the provisions of the Curfew Ordinances, but rather, lament the lack of detail on how the age of a suspected minor would be determined. The mechanisms related to the implementation of the Curfew Ordinances are, however, matters of policy that are best left for the political branches of government to resolve. Verily, the objective of curbing unbridled enforcement is not the sole consideration in a void for vagueness analysis; rather, petitioners must show that this perceived danger of unbridled enforcement stems from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited.

Besides, petitioners are mistaken in claiming that there are no sufficient standards to identify suspected curfew violators. While it is true that the Curfew Ordinances do not explicitly state these parameters, law enforcement agents are still bound to follow the prescribed measures found in statutory law when implementing ordinances. Specifically, RA 9344, as amended which provides the mechanisms for the determination of age (*SPARK, Et. al. vs. Quezon City*, GR No. 225442, August 08, 2017).

EQUAL PROTECTION OF THE LAWS

All persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It guarantees equality, not identity of rights. It does not forbid discrimination as to persons and things that are different. What it forbids are distinctions based on impermissible criteria unrelated to a proper legislative purpose, or class or discriminatory legislation, which discriminates against some and favors others when both are similarly situated.

Q: EO 1 was issued by President Aquino to investigate reported cases of graft and corruption of the Arroyo administration. Is such action valid?

A: NO. It must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of



its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution (*Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010).

Q: Are aliens entitled to the protection of equal protection clause?

A: GR: It applies to all persons, both citizens and aliens. The Constitution places the civil rights of aliens on equal footing with those of the citizens.

XPN: Statutes may validly limit exclusively to citizens the enjoyment of rights or privileges connected with public domain, the public works, or the natural resources of the State.

NOTE: The rights and interests of the State in these things are not simply political but also proprietary in nature and so citizens may lawfully be given preference over aliens in their use or enjoyment.

Rationale for allowing, in exceptional cases, valid classification based on citizenship

Aliens do not naturally possess the sympathetic consideration and regard for customers with whom they come in daily contact, nor the patriotic desire to help bolster the nation's economy, except insofar as it enhances their profit, nor the loyalty and allegiance which the national owes to the land. These limitations on the qualifications of aliens have been shown on many occasions and instances, especially in times of crisis and emergency (*Ichong v. Hernandez*, G.R. No. L-7995, May 31, 1957).

REQUISITES FOR VALID CLASSIFICATION

The classification must (S-G-Ex-A)

1. Rest on substantial distinctions;
2. Be germane to the purpose of the law;
3. Not be limited to existing conditions only; and
4. Apply equally to all members of the same class (*People v. Cayat*, G.R. No. L-45987, May 5, 1939).

Basis for classification

1. Age;
2. Gender;
3. Religion;
4. Economic Class;
5. Ethnicity;
6. Race;
7. Sexual Orientation;

8. Residence;
9. Disability; and
10. Date of filing / Effectivity of the law.

Q: Rosalie Garcia filed a case against her husband, Jesus Garcia, for violation of R.A. 9262. The RTC then issued a Temporary Protection Order. Jesus argues that R.A. 9262 violates the guarantee of equal protection because the remedies against personal violence that it provides may be invoked only by the wives or women partners but not by the husbands or male partners even if the latter could possibly be victims of violence by their women partners. Does R.A. 9262 (VAWC) violate the equal the protection clause of the Constitution?

A: NO. R.A. 9262 rests on substantial distinction. There is an unequal power relationship between women and men and the fact that women are more likely than men to be victims of violence and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. The classification is germane to the purpose of the law. The distinction between men and women is germane to the purpose of R.A. 9262, which is to address violence committed against women and children. As spelled out in its Declaration of Policy, the State recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security. Moreover, the application of R.A. 9262 is not limited to the existing conditions when it was promulgated, but to future conditions as well, for as long as the safety and security of women and their children are threatened by violence and abuse. Furthermore, R.A. 9262 applies equally to all women and children who suffer violence and abuse.

There is likewise no merit to the contention that R.A. 9262 singles out the husband or father as the culprit. As defined above, VAWC may likewise be committed "against a woman with whom the person has or had a sexual or dating relationship." Clearly, the use of the gender-neutral word "person" who has or had a sexual or dating relationship with the woman encompasses even lesbian relationships. Moreover, while the law provides that the offender be related or connected to the victim by marriage, former marriage, or a sexual or dating relationship, it does not preclude the application of the principle of conspiracy under the Revised Penal Code (*Garcia v. Drilon*, G.R. No. 179267, June 25, 2013).

NOTE: In his separate concurring opinion, Justice Abad said that R.A. 9262 is discriminatory but it does not deny equal protection because of the concept of expanded equal protection clause enshrined by Sec. 1 Art. XIII and Sec. 14 Art. II of the



Constitution and because of this, the equal protection clause can be interpreted not only as a guarantee of formal equality (if it passes the "reasonableness test") but also of substantive equality. The expanded equal protection clause should be understood as meant to "reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."

Q: Sec. 5.23 of the Reproductive Health Law-IRR provides that skilled health professional such as provincial, city or municipal health officers, chiefs of hospital, head nurses, supervising midwives cannot be considered as conscientious objectors. Is this provision unconstitutional?

A: YES. This is discriminatory and violative of the equal protection clause. The conscientious objection clause should be equally protective of the religious belief of public health officers. There is no perceptible distinction why they should not be considered exempt from the mandates of the law. The protection accorded to other conscientious objectors should equally apply to all medical practitioners without distinction whether they belong to the public or private sector. After all, the freedom to believe is intrinsic in every individual and the protective robe that guarantees its free exercise is not taken off even if one acquires employment in the government (*Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014).

Q: The New Central Bank Act created two categories of employees: (1) *BangkoSentral ng Pilipinas* officers who are exempt from the Salary Standardization Law (SSL) and (2) rank-and-file employees with salary grade 19 and below who are not exempt from the SSL. Subsequent to the enactment of the Act, the charters of the Land Bank of the Philippines and all other Government Financial Institutions (GFIs) were amended exempting all their personnel, including the rank-and-file employees, from the coverage of the SSL. BSP Employees Association filed a petition to prohibit the BSP from implementing the provision of the Act for they were illegally discriminated against when they were placed within the coverage of the SSL. Was there a violation of the equal protection clause of the Constitution?

A: YES. In the field of equal protection, the guarantee that "no person shall be denied the equal protection of the laws" includes the prohibition against enacting laws that allow invidious discrimination, directly or indirectly. If a law has the effect of denying the equal protection of the law, or permits such denial, it is unconstitutional. It is

against this standard that the disparate treatment of the BSP rank-and-file from the other Government Financial Institutions (GFI) cannot stand judicial scrutiny. For, as regards the exemption from the coverage of the SSL, there exists no substantial distinction so as to differentiate the BSP rank-and-file from the other rank-and-file of other GFIs. The challenged provision of the New Central Bank Act was facially neutral insofar as it did not differentiate between the rank-and-file employees of the BSP and the rank-and-file employees of other GFIs, and yet its effects, when taken in light of the exemption of the latter employees from the SSL, were discriminatory (*Central Bank Employees Association, Inc., v. BangkoSentral ng Pilipinas*, G.R. No. 148208, December 15, 2004).

Q: The Quezon City government passed an ordinance imposing garbage collection fees. The fee imposed for a condominium unit occupant is higher than that of a residential lot owner. Does this violate the equal protection clause?

A: YES. For the purpose of garbage collection, there is, in fact, no substantial distinction between an occupant of a lot, on one hand, and an occupant of unit in a condominium, socialized housing project or apartment, on the other hand. Most likely, garbage output produced by these types of occupants is uniform and does not vary to a large degree; thus, a similar schedule of fees is both just and equitable. The rates being charged by the ordinance are unjust and inequitable: a resident of a 200 sq. m. unit in a condominium or socialized housing project has to pay twice the amount than a resident of a lot similar in size; unlike unit occupants, all occupants of a lot with an area of 200 sq. m. and less have to pay a fixed rate of Php100.00; and the same amount of garbage fee is imposed regardless of whether the resident is from a condominium or from a socialized housing project (*Ferrer v. Bautista*, G.R. No. 210551, June 30, 2015).

NOTE: The legislature may not validly classify the citizens of the State on the basis of their origin, race, or parentage. But the difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of police power (*Demore v. Kim*, 538 U.S. 510, April 29, 2003).

STANDARDS OF JUDICIAL REVIEW

Tests in determining compliance with the equal protection clause (2015 Bar)

1. *Rational Basis Test* – The traditional test, which requires "only that government must not impose differences in treatment except upon some reasonable differentiation fairly related to the object of regulation." Simply put, it merely



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demands that the classification in the statute reasonably relates to the legislative purpose (*Concurring Opinion of Justice Leonardo-De Castro in Garcia v. Drilon, G.R. No. 179267, June 25, 2013*).

2. **Strict Scrutiny Test** – This refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection (*White Light Corporation v. City of Manila, G.R. No. 122846, January 20, 2009*).

It is applied when the challenged statute either:

- a. Classifies on the basis of an inherently suspect characteristic; or
- b. Infringes fundamental constitutional rights; that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. The presumption of constitutionality is reversed; that is, such legislation is assumed to be unconstitutional until the government demonstrates otherwise (*Central Bank Employees Association Inc. v. BSP, GR. No. 148208, December 15, 2004*).

Rational Basis Test vs. Strict Scrutiny

RATIONAL BASIS TEST	STRICT SCRUTINY
Applies to legislative classifications in general, such as those pertaining to economic or social legislation, which do not affect fundamental rights of suspect classes; or is not based on gender or illegitimacy.	Applies to legislative classifications affecting fundamental rights or suspect classes.
Legislative purpose must be legitimate.	Legislative purpose must be compelling.
Classification must be rationally related to the legislative purpose.	Classification must be necessary and narrowly tailored to achieve the legislative purpose.

(*Central Bank Employees Association Inc. v. BSP, GR. No. 148208, December 15, 2004*)

3. **Intermediate Scrutiny Test** –It requires that the classification (means) must serve an important governmental objective (ends) and is substantially related to the achievement of such objective. A classification based on sex is the best-established example of an intermediate level of review (*Concurring Opinion of Justice Leonardo-De Castro in Garcia v. Drilon, G.R. No. 179267, June 25, 2013*).
- 4.

SEARCHES AND SEIZURES

Right against unreasonable searches and seizures (1990, 1991, 1992, 1993, 2000, 2001, 2002, 2005, 2008 Bar)

Right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and persons or things to be seized (1987 Constitution, Art. 3, Sec. 2).

Essence of privacy

The right to be left alone. In context, the right to privacy means the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities.

Search warrant vs. Warrant of arrest

BASIS	SEARCH WARRANT	WARRANT OF ARREST
<i>As to authority, which examines</i>	The judge must personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce	It is not necessary that the judge should personally examine the complainant and his witnesses; the judge would simply personally review the initial



	on facts personally known to them.	determination of the prosecutor to see if it is supported by substantial evidence.
Basis of determination	The determination of probable cause depends to a large extent upon the finding or opinion of the judge who conducted the required examination of the applicant and the witnesses.	He merely determines the probability, not the certainty of guilt of the accused and, in so doing, he need not conduct a new hearing.

WARRANT REQUIREMENT

Requisites of a valid search warrant and warrant of arrest

1. It must be issued upon determination of probable cause;
2. The probable cause must be determined by the judge himself and not by the applicant or any other person;
3. In the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and
4. The warrant issued must particularly describe the place to be searched and persons and things to be seized (*HPS Software and Communication Corporation and Yap v. PLDT, G.R. Nos. 170217 and 170694, December 10, 2012*).

NOTE: General warrant is not allowed. It must be issued pursuant to a specific offense (*Stonehill v. Diokno, G.R. No. L-19550, June 19, 1967*).

General warrants

Warrants of broad and general characterization or sweeping descriptions which will authorize police officers to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to an offense.

Purpose of particularity of description in search warrants

1. Readily identify the properties to be seized and thus prevent the peace officers from seizing the wrong items; and
2. Leave peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures (*Bache and Co. v. Ruiz, 37 SCRA 823, February 27, 1971*).

Particularity of description for a search warrant is complied with when:

1. The description therein is as specific as the circumstances will ordinarily allow; or
2. The description expresses a conclusion of fact, not of law, by which the warrant officer may be guided in making the search and seizure; or
3. The things described are limited to those which bear direct relation to the offense for which the warrant is being issued.

NOTE: If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence other than those articles to prove said offense. The articles subject of search and seizure should come in handy merely to strengthen such evidence.

Properties subject to seizure

1. Property subject of the offense;
2. Stolen or embezzled property and other proceeds or fruits of the offense; or
3. Property used or intended to be used as means for the commission of an offense.

NOTE: Seized items in violation of Art. 201 of the RPC, such as immoral doctrines, obscene publications and indecent shows, can be destroyed even if the accused was acquitted. P.D. No. 969 (An Act amending Art. 201) mandates the forfeiture and destruction of pornographic materials involved in the violation of Article 201 of the Revised Penal Code, even if the accused was acquitted (*Nogales v. People, G.R. No. 191080, November 21, 2011*).

Court with the primary jurisdiction in issuing search warrants

The RTC where the criminal case is pending or if no information has yet been filed, in RTC in the area/s contemplated. An RTC not having territorial jurisdiction over the place to be searched, however, may issue a search warrant where the filing of such



is necessitated and justified by compelling considerations of urgency, subject, time, and place.

Nature of search warrant proceedings

Neither a criminal action nor a commencement of a prosecution. It is solely for the possession of personal property (*United Laboratories, Inc. v. Isip, G.R. No. 163858, June 28, 2005*).

Probable cause

Probable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man to believe that his action and the means taken in prosecuting it are legally just and proper. It requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and that the objects sought in connection with that offense are in the place to be searched (*HPS Software and Communications Corp. and Yap v. PLDT, G.R. Nos. 170217 and 170694, December 10, 2012*).

Such facts and circumstances antecedent to the issuance of a warrant that in themselves are sufficient to induce a cautious man to rely on them and act in pursuance thereof.

The evidence necessary to establish probable cause is based only on the likelihood, or probability, of guilt (*Estrada v. Office of the Ombudsman, et al., G.R. Nos. 212140-41, January 21, 2015, cited in ABS-CBN Corporation v. Gozon, G.R. No. 195956, March 11, 2015*).

Q: LPG Dealers Association and Total Gaz LPG Dealers Association filed a letter-complaint before the NBI-IRO, requesting assistance in the surveillance, investigation, apprehension and prosecution of respondents for alleged illegal trading of LPG products and/or underfilling, possession and/or sale of underfilled LPG products. The NBI-IRO - through its agent De Jamil and undercover NBI asset Antonio conducted surveillance and test-buy operations and thereafter they filed two Applications for Search Warrant to conduct a search of the Magsingal LPG refilling plant. Can the personal knowledge of the witnesses of the commission of the illegal trading and underfilling of LPG products be a basis for determining probable cause in search warrant applications?

A: YES. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands

more than bare suspicion; it requires less than evidence which would justify conviction. The judge, in determining probable cause, is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula, and must employ a flexible, totality of the circumstances standard. Facts discovered during surveillance - on the basis of information and evidence provided by petitioners - constitute personal knowledge which could form the basis for the issuance of a search warrant (*Petron LPG Dealers Association v. Ang, G.R. No. 199371, February 3, 2016*).

Personal knowledge

1. The person to be arrested must execute an overt act indicating that he had just committed, is actually committing, or is attempting to commit a crime; and
2. Such overt act is done in the presence or within the view of the arresting officer.

NOTE: Initial hearsay information or tips from confidential informants could very well serve as basis for the issuance of a search warrant, if followed up personally by the recipient and validated. Looking at the records, it is clear that Padilla and his companions were able to personally verify the tip of their informant. The evidence on record clearly shows that the applicant and witnesses were able to verify the information obtained from their confidential source. The evidence likewise shows that there was probable cause for the issuance of a search warrant. Thus, the requirement of personal knowledge of the applicant and witnesses was clearly satisfied in this case (*Microsoft Corporation v. Samir Farajallah, G.R. No. 205800, September 10, 2014*).

Mere "reliable information" will not satisfy the "personal knowledge" requirement

The long-standing rule in this jurisdiction, applied with a great degree of consistency, is that "reliable information" alone is not sufficient to justify a warrantless arrest under Section 5(a), Rule 113. The rule requires, in addition, that the accused perform some overt act that would indicate that he "has committed, is actually committing, or is attempting to commit an offense."

In the leading case of *People v. Burgos*, this Court held that "the officer arresting a person who has just committed, is committing, or is about to commit an offense must have **personal knowledge** of that fact. The offense must also be committed in his presence or within his view." In *Burgos*, the authorities obtained information that the accused had forcibly recruited one Cesar Masamlok as member of the New People's Army, threatening the



latter with a firearm. Upon finding the accused, the arresting team searched his house and discovered a gun as well as purportedly subversive documents (*People v. Tudtud*, G.R. No. 144037, September 26, 2003).

Searching questions

Examination by the investigating judge of the complainant and the latter's witnesses in writing and under oath or affirmation, to determine whether there is a reasonable ground to believe that an offense has been committed and whether the accused is probably guilty thereof so that a warrant of arrest may be issued and he may be held liable for trial.

A police officer cannot amplify or modify what has been set out in the warrant

Such a change is proscribed by the Constitution which requires a search warrant to particularly describe the place to be searched; otherwise it would open the door to abuse of the search process, and grant to officers executing the search that discretion which the Constitution has precisely removed from them.

The particularization of the description of the place to be searched may properly be done only by the judge, and only in the warrant itself; it cannot be left to the discretion of the police officers conducting the search.

It is neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched —although not that specified in the warrant — is exactly what they had in view when they applied for the warrant and had demarcated in their supporting evidence. What is material in determining the validity of a search is the place stated in the warrant itself, not what applicants had in their thoughts, or had represented in the proofs they submitted to the court issuing the warrant (*People v. CA*, 291 SCRA 400, June 26, 1998).

Q: Nenita and Julienne were graduating high school students at St. Theresa's College (STC), Cebu City. While changing into their swimsuits for a beach party they were about to attend, Julia and Julienne, along with several others, took digital pictures of themselves clad only in their undergarments. These pictures were then uploaded by Angela on her Facebook profile.

Back at the school, Escudero, a computer teacher at STC's high school department, learned from her students that some seniors at STC posted

pictures online, depicting themselves from the waist up, dressed only in brassieres. Escudero reported the matter and, through one of her student's Facebook page, showed the photos to Tigol, STC's Discipline-in-Charge, for appropriate action. Were unlawful means used by STC in gathering information about the photo?

A: NO. Even assuming that the photos in issue are visible only to the sanctioned students' Facebook friends, respondent STC can hardly be taken to task for the perceived privacy invasion since it was the minors' Facebook friends who showed the pictures to Tigol. Respondents were mere recipients of what were posted. They did not resort to any unlawful means of gathering the information as it was voluntarily given to them by persons who had legitimate access to the said posts. Clearly, the fault, if any, lies with the friends of the minors. Curiously enough, however, neither the minors nor their parents imputed any violation of privacy against the students who showed the images to Escudero (*Vivares v. St. Theresa's College*, G.R. No. 202666, September 29, 2014).

WARRANTLESS SEARCHES

Instances of a valid warrantless search (2000, 2009, 2015 Bar)

1. Visual search is made of moving vehicles at checkpoints;
2. Search is an incident to a valid arrest;

NOTE: An officer making an arrest may take from the person:

- a. Any money or property found upon his person which was used in the commission of the offense
- b. Was the fruit thereof
- c. Which might furnish the prisoner with the means of committing violence or escaping
- d. Which might be used as evidence in the trial of the case

3. Search of passengers made in airports;
4. When things seized are within plain view of a searching party (*Plain View Doctrine*);
5. Stop and frisk (precedes an arrest);
6. When there is a valid express waiver made voluntarily and intelligently;

NOTE: Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence. Consent must also be voluntary in order to validate an otherwise illegal search;



that is, the consent must be unequivocal, specific, intelligently given, and uncontaminated by any duress or coercion [*Caballes v CA*, 373 SCRA 221 (2002)]. **(2015 Bar)**

In this case, petitioner was merely "ordered" to take out the contents of his pocket (*Alcaraz v. People*, G.R. No. 199042, November 17, 2014).

7. Customs search; and
8. Exigent and emergency circumstances (*People v. De Gracia*, 233 SCRA 716, July 6, 1994).

Plain View Doctrine (2012 Bar)

Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence. It applies when the following requisites concur: **(J-I-A)**

1. The law enforcement officer in search of the evidence has a prior **justification** for an intrusion or is in a position from which he can view a particular area;
2. The discovery of the evidence in plain view is **inadvertent**; and
3. It is immediately **apparent** to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure.

The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent (*Fajardo v. People*, G.R. No. 190889, January 10, 2011).

NOTE: Plain View Doctrine cannot be applied where there was no evidence in plain view of law enforcers serving the search warrant (*United Laboratories, Inc. v. Isip*, G.R. No. 163858, June 28, 2005).

Q: Kwino, a drug pusher was entrapped in a buy bust operation. He led the police officers to the house of Carlo Ray, his supposed associate and his house was searched. A cardboard box with bricks of marijuana inside was found in her residence. However, Carlo Ray's warrantless arrest was declared illegal by the court. It follows that the search of his person and home and the subsequent seizure of the marked bills and marijuana cannot be deemed legal as an

incident to her arrest. Was the marijuana in the cardboard box in plain view during the search, making the warrantless seizure valid and acceptable in evidence?

A: NO. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.

It is clear that an object is in plain view if the object itself is plainly exposed to sight. The difficulty arises when the object is inside a closed container. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized (*People v. Doria*, G.R. No. 125299, January 22, 1999).

Stop-and-frisk search (2009, 2012 Bar)

Limited protective search of outer clothing for weapons. Probable cause is not required but a genuine reason must exist in light of a police officer's experience and surrounding conditions to warrant the belief that the person detained has weapons concealed (*Malacat v. CA*, G.R. No. 123595, December 12, 1997).

Checkpoints

Searches conducted in checkpoints are lawful, provided the checkpoint complies with the following requisites:

1. The establishment of checkpoint must be **pronounced**;
2. It must be **stationary**, not roaming; and
3. The search must be limited to **visual search** and must not be an intrusive search.

NOTE: Not all searches and seizures are prohibited. Between the inherent right of the State to protect its existence and promote public welfare and an individual's right against warrantless search which is however reasonably conducted, the former should prevail.

A checkpoint is akin to a stop-and-frisk situation whose object is either to determine the identity of suspicious individuals or to maintain the *status quo* momentarily while the police officers seek to obtain more information (*Valmonte v. De Villa*, G.R. No. 83988, September 29, 1989).



Motorists and their vehicles passing through checkpoints may also be stopped and extensively searched

While, as a rule, motorists and their vehicles passing through checkpoints may only be subjected to a routine inspection, vehicles may be stopped and extensively searched when there is probable cause which justifies a reasonable belief among those at the checkpoints that either the motorist is a law offender or the contents of the vehicle are or have been instruments of some offense (*People v. Vinecario*, G.R. No. 141137, January 20, 2004).

Checkpoint rules under LTO Code (R.A. 4136)

There is, to stress, nothing in R.A. 4136 that authorized the checkpoint-manning policemen to order petitioner and his companions to get out of the vehicle for a vehicle and body search. And it bears to emphasize that there was no reasonable suspicion of the occurrence of a crime that would allow what jurisprudence refers to as a "stop and frisk" action. As SPO4 Bodino no less testified, the only reason why they asked petitioner to get out of the vehicle was not because he has committed a crime, but because of their intention to invite him to Station 9 so he could rest before he resumes driving. But instead of a tactful invitation, the apprehending officers, in an act indicative of overstepping of their duties, dragged the petitioner out of the vehicle and, in the process of subduing him, pointed a gun and punched him on the face. None of the police officers, to note, categorically denied the petitioner's allegation about being physically hurt before being brought to the Ospital ng Maynila to be tested for intoxication. What the policemen claimed was that it took the three (3) of them to subdue the fifty-five year old petitioner. Both actions were done in excess of their authority granted under R.A. 4136 (*Sydeco v. People*, G.R. No. 202692, November 12, 2014).

Q: Star was a lady frisker whose duty is to frisk departing passengers, employees, and crew and check for weapons, bombs, prohibited drugs, contraband goods, and explosives. When she frisked Rochelle, a boarding passenger, she felt something hard on Rochelle's abdominal area which was later found to be three packs of shabu. Can Rochelle invoke a violation of the search and seizure clause?

A: NO. Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased

security at the nation's airport (*People v. Leila Johnson*, G.R. No.138881, December 18, 2000).

Q: Civil Service Commission (CSC) Chairperson Karina Constantino-David received an anonymous letter alleging that the chief of CSC's Legal Division, Ricky Pollo, is acting as a lawyer of an accused government employee who has a pending case in the CSC. Consequently, a team with IT background was formed to back up all the files in the computers found in the Legal Division. Pollo was not present during the backing-up and was only informed through text message. It was then found that most of the files sourced from the computer used by Pollo were pleadings and letters connected with pending cases in CSC and other tribunals. He was found guilty of dishonesty, grave misconduct and conduct prejudicial to the best interest of the service and violation of R.A. 6713 and penalized him with dismissal. Were the searching and copying of Pollo's computer files a violation of the right against unreasonable searches and seizures?

A: NO. First, Pollo failed to prove that he had an actual (subjective) expectation of privacy either in his office or government-issued computer which contained his personal files. The CSC had implemented a policy that put its employees on notice that they have no expectation of privacy in **anything** they create, store, send or receive on the office computers, and that the CSC may monitor the use of the computer resources using both automated and human means. This implies that on-the-spot inspections may be done to ensure that the computer resources were used only for such legitimate business purposes. Second, the search of petitioner's computer files was conducted in connection with investigation of work-related misconduct prompted by an anonymous letter-complaint addressed to Chairperson David regarding anomalies in the CSC-ROIV where the head of the *MamamayanMuna Hindi Mamaya Na* division is supposedly "lawyering" for individuals with pending cases in the CSC. A search by a government employer of an employee's office is justified at inception when there are reasonable grounds for suspecting that it will turn up evidence that the employee is guilty of work-related misconduct (*Pollo v. David*, G.R. No. 181881, October 18, 2011).

Q: Luz was flagged down by PO3Alteza for driving a motorcycle without a helmet. Alteza invited Luz to their sub-station and while issuing a citation ticket for violation of municipal ordinance, Alteza was alerted by the latter's uneasy movement and asked him to put out the contents of the pocket of his jacket. It was revealed that Luz was in possession of



prohibited drugs. Can the roadside questioning of a motorist detained pursuant to a routine traffic stop be considered a formal arrest?

A: NO. The time he was waiting for Alteza to write his citation ticket may be characterized as waiting time. Luz could not be said to have been under arrest. There was no intention on the part of Alteza to arrest him, deprive him of his liberty, or take him into custody. In fact, Alteza himself testified that it was only for the sake of convenience that they were waiting at the sub-station (*Luz v. People of the Philippines*, G.R. No. 197788, February 29, 2012).

Q: A search was conducted on March 3, 1986. During which the Philippines has no Constitution. The Constabulary raiding team searched the house of Elizabeth Dimaano by virtue of a search warrant and thereafter seized some items not included in the warrant. Dimaano questioned the search for being violative of the Constitution. Can she invoke her right against unreasonable searches and seizures during the interregnum?

A: YES. The Bill of Rights under the 1973 Constitution was not operative during the interregnum. Be that as it may, under Art. 17(1) of the International Covenant on Civil and Political Rights, the revolutionary government had the duty to insure that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. Art. 17(2) provides that no one shall be arbitrarily deprived of his property. Although the signatories to the Declaration did not intend it as a legally binding document, being only a declaration, the Court has interpreted the Declaration as part of the generally accepted principles of international law and binding on the state. The revolutionary government did not repudiate the Covenant or the Declaration during the interregnum. It was also obligated under international law to observe the rights of individuals under the Declaration (*Republic v. Sandiganbayan*, G.R. No. 104768, July 21, 2003).

Q: While sleeping in his room, Kel was arrested by virtue of a warrant of arrest and he was dragged out of the room. Thereafter, some police officers ransacked the locked cabinet inside the room where they found a firearm and ammunition. Are the warrantless search and seizure of the firearm and ammunition justified as an incident to a lawful arrest?

A: NO. The scope of the warrantless search is not without limitations. A valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The purpose of the exception is to protect the arresting officer from being harmed

by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach. In this case, search was made in the locked cabinet which cannot be said to have been within Kel's immediate control. Thus, the search exceeded the bounds of what may be considered as an incident to a lawful arrest (*Valeroso v. CA*, G.R. No. 164815, September 3, 2009).

Q: A buy-bust operation was conducted in DM's store. Police Officer CA Tandoc posed as a buyer and bought marijuana from DM. After the exchange of marked money and marijuana, Tandoc arrested DM without a warrant. The other police officer searched the store and seized a plastic container containing six marijuana stocks. Thereafter, DM was charged with selling marijuana. Is the warrantless seizure of marijuana legal?

A: YES. The search being an incident to a lawful arrest, it needed no warrant for its validity. The accused having been caught in *flagrante delicto*, the arresting officers were duty bound to apprehend her immediately. The warrantless search and seizure, as an incident to a lawful arrest, may extend to include the premises under the immediate control of the accused. The accused may not successfully invoke the right against a warrantless search, even as regards the plastic container with dried marijuana leaves found on the table in his store (*People v. Salazar*, G.R. No. 98060, January 27, 1997).

Sec. 19 of the Cybercrime Law is unconstitutional

Sec. 19 empowers the Department of Justice to restrict or block access to computer data when a computer data is *prima facie* found to be in violation of the provisions of the Cybercrime Law. The Department of Justice order cannot be a substitute for judicial search warrant. The Government, in effect, seizes and places the computer data under its control and disposition without a warrant. Not only does Sec. 19 preclude any judicial intervention, but it also disregards jurisprudential guidelines established to determine the validity of restrictions on speech for the content of the computer data can also constitute speech. Sec. 19 merely requires that the data to be blocked be found *prima facie* in violation of any provision of the cybercrime law. It does not take into consideration any of the three tests: the dangerous tendency doctrine, the balancing of interest test and the clear and present danger rule. Therefore, Sec. 19 is unconstitutional (*Disini v. Secretary of Justice*, G.R. No. 203335, February 11, 2014).

Q: Sgt. Victorino Noceja and Sgt. Alex de Castro, while on a routine patrol in Pagsanjan, Laguna, spotted a passenger jeep unusually covered with



"kakawati" leaves. Suspecting that the jeep was loaded with smuggled goods, the two police officers flagged down the vehicle driven by Rudy. The police officers then checked the cargo and they discovered bundles of 3.08 mm aluminum/galvanized conductor wires exclusively owned by National Power Corporation (NPC). Police officers took Rudy into custody and seized the conductor wires. Was Rudy's right against unreasonable searches and seizures violated when the police officers searched his vehicle and seized the wires found therein without a search warrant?

A: YES. When a vehicle is stopped and subjected to an extensive search, such a warrantless search would be constitutionally permissible only if the officers conducting the search have reasonable or probable cause to believe, before the search, that either the motorist is a law-offender or they will find the instrumentality or evidence pertaining to a crime in the vehicle to be searched. However, the fact that the vehicle looked suspicious simply because it is not common for such to be covered with *kakawati* leaves does not constitute "probable cause" as would justify the conduct of a search without a warrant. Furthermore, the police authorities did not claim to have received any confidential report or tipped information that Rudy was carrying stolen cable wires in his vehicle which could otherwise have sustained their suspicion. It cannot likewise be said that the cable wires found in Rudy's vehicle were in plain view, making its warrantless seizure valid. The cable wires were not exposed to sight because they were placed in sacks and covered with leaves. The articles were neither transparent nor immediately apparent to the police authorities (*Caballes v. CA, G. R. No. 136292, January 15, 2002*).

Q: A police officer flagged down a rider for driving without a helmet. The police officer invited the rider to come inside their sub-station located near the area. While issuing a citation ticket for violation of a municipal ordinance, the police officer noticed that the accused was uneasy and kept on reaching something from his jacket. He then asked the rider to take out the contents of his jacket's pocket. It turned out, the rider has in his possession two plastic sachets of suspected shabu. The RTC convicted him of illegal possession of dangerous drugs since he had been lawfully arrested for a traffic violation and then subjected to a valid search, which led to the discovery on his person of two plastic sachets of shabu. On appeal, the CA affirmed the RTC's Decision.

In his appeal to the SC, the rider claims that there was no lawful search and seizure, because there was no lawful arrest since he was not even

issued a citation ticket or charged with violation of the city ordinance. Even assuming that there was a valid arrest, he claims that he had never consented to the search conducted upon him. Should the rider-appellant's contention be upheld?

A: YES. There was no valid arrest of appellant. When he was flagged down for committing a traffic violation, he was not, *ipso facto* and solely for this reason, arrested.

Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

At the time that he was waiting for the police officer to write his citation ticket, appellant could not be said to have been under arrest. There was no intention on the part of the former to arrest him, deprive him of his liberty, or take him into custody. Prior to the issuance of the ticket, the period during which appellant was at the police station may be characterized merely as waiting time. In fact, as found by the trial court, the only reason they went to the police sub-station was that appellant had been flagged down almost in front of that place. Hence, it was only for the sake of convenience that they were waiting there. There was no intention to take him into custody.

It also appears that, according to City Ordinance No. 98-012, which was violated by appellant, the failure to wear a helmet while riding a motorcycle is penalized by a fine only. Under the Rules of Court, a warrant of arrest need not be issued if the information or charge was filed for an offense penalized by a fine only. It may be stated as a corollary that neither can a warrantless arrest be made for such an offense.

There being no valid arrest, the warrantless search that resulted from it was likewise illegal (*Rodel Luz vs. People, G. R. No. 197788, February 29, 2012*).

Waiver of Unlawful Arrests and Illegal Searches

A waiver of an illegal arrest, however, is not a waiver of an illegal search. Records have established that both the arrest and the search were made without a warrant. While the accused has already



waived his right to contest the legality of his arrest, he is not deemed to have equally waived his right to contest the legality of the search (*Alcaraz v. People, G.R. No. 199042, November 17, 2014*).

WARRANTLESS ARRESTS

Arrest

It is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary (*Luz v. People, G.R. 197788, February 29, 2012*).

Instances of a valid warrantless arrest

1. *In flagrante delicto* – The person to be arrested has either committed, is actually committing, or is about to commit an offense in the presence of the person making the arrest [*Rules of Court, Rule 113, Sec. 5(a)*].

Requisites: (O-P/V-A)

- a. Person to be arrested must commit an **O**vert act indicating that he has just committed, is actually committing, or is attempting to commit a crime;
 - b. Such overt act is done in the **P**resence of **o**r within the **V**iew of the person making the arrest; and
 - c. Person making the arrest must be personally **A**ware of the commission of the crime.
2. *Hot Pursuit* – When an offense has in fact just been committed and the arresting officer has probable cause to believe, based on personal knowledge of the facts and circumstances indicating, that the person to be arrested has committed it [*Rules of Court, Rule 113, Sec. 5(b)*].
 3. *Escaped Prisoner or Detainee* – When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from

one confinement to another [*Rules of Court, Rule 113, Sec. 5(c)*].

4. *Waiver* – When the right is waived by the person arrested, provided he knew of such right and knowingly decided not to invoke it.

NOTE: The waiver is limited to invalid arrest and does not extend to illegal search.

5. *Continuing offenses* – A peace officer can validly conduct a warrantless arrest in crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof, or in connection therewith constitute direct assaults against the State, which are in the nature of continuing crimes. Since rebellion is a continuing offense, a rebel may be arrested at any time, with or without a warrant, as he is deemed to be in the act of committing the offense at any time of the day or night (*Umil v. Ramos, 187 SCRA 311, October 3, 1991*).
6. *Arrest after escape or rescue* – If a person lawfully arrested escapes or is rescued, any person may immediately pursue or retake him without a warrant at any time and in any place within the Philippines (*Rules of Court, Rule 113, Sec. 13*).
7. *Arrest of accused out on bail* – For the purpose of surrendering the accused, the bondsman may arrest him or, upon, written authority endorsed on a certified copy of the undertaking, cause him to be arrested by a police officer or any other person of suitable age and discretion (*Rules of Court, J. Herrera, Jr., Criminal Procedure Syllabus, Rule 114, Sec. 23, first par.*).
8. *Arrest of accused out on bail* – An accused released on bail may be re-arrested without the necessity of a warrant, if he attempts to depart from the Philippines without permission of the court where the case is pending (*Rules of Court, J. Herrera, Jr., Criminal Procedure Syllabus, Rule 114, Sec. 23, second par.*).

NOTE: An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefore, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided



that he raises them before entering his plea (*Rules of Court, Rule 114, Sec. 26*).

Q: While on routine patrol, police officers chanced upon two individuals chanting and in the act of exchanging something. The police officers introduced themselves and then inquired from Rebellion what he was holding. Three strips of aluminum foil and a plastic sachet which contained white crystalline substance which looked like *tawas* were confiscated from them. Suspecting that the substance was *shabu*, the police officers confiscated the plastic sachet and brought Rebellion and his companion to the MAC station. Was there a valid warrantless arrest?

A: YES. There is no doubt that petitioner was arrested in flagrante delicto as he was then committing a crime, a violation of the Dangerous Drugs Act, within the view of the arresting team. The essential elements in illegal possession of dangerous drugs are (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug. All these elements are obtaining and duly established in this case. Thus, his case comes under the exception to the rule requiring a warrant before effecting an arrest (*Rebellion v. People, G.R. No. 175700, July 5, 2010*).

Q: Villamor and Banaobra were arrested without a warrant for collecting and soliciting bets for an illegal numbers game locally known as "lotteng". The arrest was made while the two were in possession of alleged gambling paraphernalia such as a calculator, cellphone, list of various numbers and cash in the amount of P1,500.00. Villamor and Banaobra contend that Villamor only went to Banaobra's house to pay a debt he owed to the latter's wife and that when Villamor gave P2,000.00 to Banaobra, which he placed on top of the table, Banaobra then proceeded to answer his phone when a police officer kicked the fence of Banaobra's house and arrested them. The police officers argued that the warrantless arrest was lawful because they personally saw that overt act being committed outside of the bamboo fence of Banaobra's house. The RTC held that both of them were guilty, which was affirmed by the CA. Is the warrantless arrest lawful?

A: NO. In warrantless arrests made pursuant to Section 5(a), Rule 113 of the Rules of Court, two elements must concur, namely; (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the

arresting officer." Considering that the 15 to 20 meters is a significant distance between the police officers and the petitioners, the Court finds it doubtful that the police officers were able to determine that a criminal activity was ongoing to allow them to validly effect an in flagrante delicto warrantless arrest and a search incidental to a warrantless arrest thereafter. Consequently, the evidence obtained by the police officers is inadmissible against the petitioners (*Villamor and Banaobra v. People of the Philippines, G.R. No. 200396, March 22, 2017*).

Arrest with warrant vs. Warrantless arrest as to the element of time

Arrest with Warrant	Warrantless Arrest
There is an appreciable lapse of time between the arrest and the commission of the crime.	There must be a large measure of immediacy between the time the offense is committed and the time of the arrest.

Q: SPO2 Epol Giwan and PO2 Teofisto Loot received information that Merz Mortega was about to deliver drugs at the Thunder Bird Resort in Angeles City. When Mortega arrived at the resort, he was carrying a sealed Zest-O juice box. The police men hurriedly accosted him and introduced themselves as police officers. When SPO2 Giwan peeked into the contents of the Zest-O box, he saw that it contained a crystalline substance. He instantly confiscated the said box. Mortega was then found guilty of illegal possession of shabu. Was the search lawful?

A: NO. Neither the *in flagrante delicto* nor the stop and frisk principle is applicable to justify the warrantless arrest and consequent search and seizure made by the police operatives on accused-appellant. In *in flagrante delicto* arrests, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Emphasis should be laid on the fact that the law requires that the search be incidental to a lawful arrest. Therefore, it is beyond cavil that a lawful arrest must precede the search of a person and his belongings. Accordingly, for this exception to apply two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. Mortega did not act in a suspicious manner. For all intents and purposes, there was no



overt manifestation that he has just committed, is actually committing, or is attempting to commit a crime (*People v. Sy Chua*, G.R. Nos. 136066-67, February 4, 2003).

Q: Pat. Jun Antonis was instructed by P/Lt. Laurel Yanny to monitor the activities of Pepe Pachico because of information that the latter was selling marijuana. Pat. Reyes positioned himself under a house which was adjacent to a chapel. Thereafter, Pat. Antonis saw Pepe enter the chapel, taking something from the compartment of a cart found inside the chapel which turned out later to be marijuana, and then return to the street where he handed the same to Alden Francisco. Police officers then pursued Alden. Upon seeing the police, he threw something to the ground which turned out to be a tea bag of marijuana. When confronted, Alden admitted that he bought the same from Pepe. Thus, Pepe was convicted for violating Dangerous Drugs Act. Was the warrantless arrest lawful? Was the evidence resulting from such arrest admissible?

A: YES. When a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant. There is nothing unlawful about the arrest considering its compliance with the requirements of a warrantless arrest. Ergo, the fruits obtained from such lawful arrest are admissible in evidence (*People v. Sucro*, G.R. No. 93239, March 18, 1991).

Q: At about 7:00 a.m. of April 3, 2003 DaksThanos, together with JohnKarol and Bong Gu, started drinking liquor and smoking marijuana in the house of Daks. They started talking about their intention to kill Macoy Marcos. The three carried out their plan at about 2:00 p.m. of the same day by mauling Macoy. At about 4:00 p.m. of the same day, Patrolman BuddyGito received a report about a mauling incident. Right away, Patrolman Gito proceeded to Paseo de Blas where the mauling incident took place. Patrolman Santos frisked Daks and found a coin purse in his pocket which contained dried leaves wrapped in cigarette foil. The dried leaves were found to be marijuana. He was held guilty for violating the Dangerous Drugs Act. Was the search lawful?

A: YES. The search conducted on Daks' person was lawful because it was made as an incident to a valid arrest. This is in accordance with Sec. 12, Rule 126 of the Revised Rules of Court which provides: a person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant." The frisk and search of appellant's

person upon his arrest was a permissible precautionary measure of arresting officers to protect themselves, for the person who is about to be arrested may be armed and might attack them unless he is first disarmed (*People v. Gerente*, G.R. No. 95847-48, March 10, 1993).

ADMINISTRATIVE ARREST

There is an administrative arrest when there is an arrest as an incident to a deportation proceeding.

The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charges against the alien:

1. Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or at any place other than at a designated port of entry (*As amended by Republic Act No. 503, Sec. 13*);
2. Any alien who enters the Philippines after the effective date of CA 613 (*Philippine Immigration Act of 1940*), who was not lawfully admissible at the time of entry;
3. Any alien who, after the effective date of this Act, is convicted in the Philippines and sentenced for a term of one year or more for a crime involving moral turpitude committed within five years after his entry to the Philippines, or who, at any time after such entry, is so convicted and sentenced more than once;
4. Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs (*As amended by Republic Act No. 503, Sec. 13*);
5. Any alien who practices prostitution or is an inmate of a house of prostitution or is connected with the management of a house of prostitution, or is a procurer;
6. Any alien who becomes a public charge within five years after entry from causes not affirmatively shown to have arisen subsequent to entry;
7. Any alien who remains in the Philippines in violation of any limitation or condition



under which he was admitted as a non-immigrant;

8. Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority or who disbelieves in or is opposed to organized government, or who advises, advocates or teaches the assault or assassination of public officials because of their office, or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines;
9. Any alien who commits any of the acts described in Sec. 45 of CA 613, independent of criminal action which may be brought against him: *Provided*, that in the case of alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: *Provided*, however, that the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head (Paragraph added pursuant to Republic Act No. 144, Sec. 3);
10. Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of Commonwealth Act No. 653 (Philippine Alien Registration Act of 1941) [now Alien Registration Act of 1950, Republic Act No. 562, as amended] or who, at any time after entry, shall have been convicted more than once of violating the provisions of the same Act (Added pursuant to Republic Act No. 503, Sec. 13);
11. Any alien who engages in profiteering, hoarding, or black-marketing, independent of any criminal action which may be brought against him (Added pursuant to Republic Act No. 503, Sec. 13);
12. Any alien who is convicted of any offense penalized under Commonwealth Act No. 473 (Revised Naturalization Laws of the Philippines) or any law relating to acquisition of Philippine citizenship (Added

pursuant to Republic Act No. 503, Sec. 13); and

13. Any alien who defrauds his creditor by absconding or alienating properties to prevent them from being attached or executed (Added pursuant to Republic Act No. 503, Sec. 13; Philippine Immigration Act of 1940).

Power of the Commissioner of Immigration

The Commissioner of Immigration is also given, by legislative delegation, the power to issue warrants of arrests.

NOTE: Sec. 2, Art. III of the Constitution does not require judicial intervention in the execution of a final order of deportation issued in accordance with law. The constitutional limitation contemplates an order of arrest in the exercise of judicial power as a step preliminary or incidental to prosecution or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as a legal order of deportation, issued by the Commissioner of Immigration, in pursuance of a valid legislation (*Morano v. Vivo*, G.R. No. L-22196, June 30, 1967).

DRUG, ALCOHOL, AND BLOOD TESTS

Q: Congress enacted the Comprehensive Dangerous Drugs Act of 2002 requiring the mandatory drug testing of candidates for public office, students of secondary and tertiary schools, officers and employees of public and private offices, and persons charged before the prosecutor's office with certain offenses. Social Justice Society questions this provision for being unconstitutional for it constitutes undue delegation of legislative power when it give unbridled discretion to schools and employers to determine the manner of drug testing as well as it can be used to harass a student or an employee deemed undesirable. Is the provision unconstitutional?

A: NO. A law requiring mandatory drug testing for students of secondary and tertiary schools is not unconstitutional. It is within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. To be sure, the right to enroll is not absolute; it is subject to fair, reasonable, and equitable requirements. In sum:

1. Schools and their administrators stand *in loco parentis* with respect to their students;
2. Minor students have contextually fewer rights than an adult, and are subject to the custody



- and supervision of their parents, guardians, and schools;
3. Schools acting *in loco parentis*, have a duty to safeguard the health and well-being of their students and may adopt such measures as may reasonably be necessary to discharge such duty; and
 4. Schools have the right to impose conditions on applicants for admission that are fair, just and non-discriminatory (*SJS v. DDB, G.R. No. 157870, November 3, 2008*).

A law requiring mandatory drug testing for officers and employees of public and private offices is not unconstitutional. As the warrantless clause of Sec. 2 Art. III of the Constitution is couched and as has been held, “reasonableness” is the touchstone of the validity of a government search or intrusion. And whether a search at issue hews to the reasonableness standard is judged by the balancing of the government-mandated intrusion on the individual’s privacy interest against the promotion of some compelling state interest. In the criminal context, reasonableness requires showing probable cause to be personally determined by a judge. Given that the drug-testing policy for employees—and students for that matter—under R.A. 9165 is in the nature of administrative search needing what was referred to in *Veronica* case as “swift and informal procedures,” the probable cause standard is not required or even practicable (*SJS v. DDB and PDEA, G.R. No. 157870, November 3, 2008*).

Q: R.A. 9165 requires mandatory drug testing for persons charged before the prosecutor’s office with criminal offenses punishable with 6 years and 1 day imprisonment. Petitioner SJS questions the constitutionality of the law on the ground that it violates the rights to privacy and against self-incrimination of an accused. Decide.

A: Such provision of R.A. 9165 is unconstitutional. The Court finds the situation entirely different in the case of persons charged before the public prosecutor’s office with criminal offenses punishable with imprisonment. The operative concepts in the mandatory drug testing are “randomness” and “suspicionless.” In the case of persons charged with a crime before the prosecutor’s office, a mandatory drug testing can never be random or suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being hauled before the prosecutor’s office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let

alone waive their right to privacy. To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of R.A. 9165. Drug testing in this case would violate a person’s right to privacy guaranteed under Sec. 2 Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves (*SJS v. DDB, G.R. No. 157870, November 3, 2008*).

NOTE: New statutory rules on the chain of custody of dangerous drugs under *R.A. No. 10640, July 15, 2014*: “That noncompliance of these requirements (chain of custody) under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.”

RIGHT TO PRIVACY IN COMMUNICATION AND CORRESPONDENCE

PRIVATE AND PUBLIC COMMUNICATIONS

GR: Right to privacy of communication and correspondence is inviolable (*1987 Philippine Constitution, Sec. 3, Art. III*).

XPNS:

1. By lawful order of the court; and
2. Public safety or public order as prescribed by law.

NOTE: Any evidence in violation of this right or the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceedings.

Anti-Wire Tapping Act (R.A. No. 4200)

A special law prohibiting and penalizing secret recording of conversations either through wire-tapping or tape recorders. It provides penalties for specific violations of private communication.

It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement,



to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape-recorder, or however otherwise described (*R.A. No. 4200, Sec. 1*).

INTRUSION, WHEN ALLOWED

The right to privacy is not absolute

The right of privacy or "the right to be let alone," like the right of free expression, is not an absolute right. A limited intrusion into a person's privacy has long been regarded as permissible where that person is a public figure and the information sought to be elicited from him or to be published about him constitute of a public character. Succinctly put, the right of privacy cannot be invoked to resist publication and dissemination of matters of public interest. The interest sought to be protected by the right of privacy is the right to be free from unwarranted publicity, from the wrongful publicizing of the private affairs and activities of an individual which are outside the realm of legitimate public concern (*Ayer Productions Pty. Ltd. v. Capulong, G.R. No. 82380, April 29, 1988*).

NOTE: Probable cause in Sec. 2, Art. III should be followed for the court to allow intrusion. Particularity of description is needed for written correspondence, but if the intrusion is done through wire-taps and the like, there is no need to describe the content. However, identity of the person or persons whose communication is to be intercepted, and the offense or offenses sought to be prevented, and the period of the authorization given should be specified.

A regulation mandating the opening of mail or correspondence of detainees is not violative of the constitutional right to privacy

There is no longer a distinction between an inmate and a detainee with regard to the reasonable expectation of privacy inside his cell. The curtailment of certain rights is necessary to accommodate institutional needs and objectives of prison facilities, primarily internal security. As long as the letters are not confidential communication between the detainee and his lawyer the detention officials may read them. But if the letters are marked confidential communication between detainee and the lawyer, the officer must not read them but only inspect them in the presence of detainees. A law is not needed before an executive officer may intrude into the rights of privacy of a detainee or a prisoner. By the very fact of their detention, they have diminished expectations of privacy rights (*Alejano v. Cabuay, G.R. No. 160792, August 25, 2005*).

A government employee charged with a crime in connection with his office does not have a reasonable expectation of privacy in his office and computer files

The Supreme Court cited the US case of *O'Connor v. Ortega*, which ruled that government agencies, in their capacity as employers, rather than law enforcers, could validly conduct search and seizure in the governmental workplace without meeting the "probable cause" or warrant requirement for search and seizure. Moreover, he failed to prove that he had an actual (subjective) expectation of privacy either in his office or government-issued computer which contained his personal files (*Pollo v. David, G.R. No. 181881, October 18, 2011*).

The Cybercrime Law does not regard as crime private communications of sexual character between consenting adults

The deliberations of the Bicameral Committee of Congress on Sec.4(c)(i) of the law show a lack of intent to penalize a private showing between and among two private persons although that may be a form of obscenity to some. The understanding of those who drew up the cybercrime law is that the element of "engaging in a business" is necessary to constitute the crime of illegal cybersex. The Act actually seeks to punish cyber prostitution, white slave trade, and pornography for favor and consideration. This includes interactive prostitution and pornography, *e.g.*, by webcam (*Disini v. Secretary of Justice, G.R. No. 203335, February 11, 2014*).

Right of privacy in social media

To address concerns about privacy, but without defeating its purpose, Facebook was armed with different privacy tools designed to regulate the accessibility of a user's profile as well as information uploaded by the user. It is through the availability of said privacy tools that many OSN (Online Social Network) users are said to have a subjective expectation that only those to whom they grant access to their profile will view the information they post or upload thereto.

This, however, does not mean that any Facebook user automatically has a protected expectation of privacy in all of his or her Facebook activities.

Before one can have an expectation of privacy in his or her OSN activity, it is first necessary that said user, in this case the children of petitioners, manifest the intention to keep certain posts private, through the employment of measures to prevent access thereto or to limit its visibility. And this intention can materialize in cyberspace through the utilization of the OSN's



privacy tools. In other words, utilization of these privacy tools is the manifestation, in cyber world, of the user's invocation of his or her right to informational privacy.

Therefore, a Facebook user who opts to make use of a privacy tool to grant or deny access to his or her post or profile detail should not be denied the informational privacy right which necessarily accompanies said choice. Otherwise, using these privacy tools would be a feckless exercise, such that if, for instance, a user uploads a photo or any personal information to his or her Facebook page and sets its privacy level at "Only Me" or a custom list so that only the user or a chosen few can view it, said photo would still be deemed public by the courts as if the user never chose to limit the photo's visibility and accessibility. Such position, if adopted, will not only strip these privacy tools of their function but it would also disregard the very intention of the user to keep said photo or information within the confines of his or her private space (*Vivares v. St. Theresa's College*, G.R. No. 202666, September 29, 2014).

Reasonable expectation of privacy test

This test determines whether a person has a reasonable expectation of privacy and whether the expectation has been violated.

In *Ople v. Torres*, we enunciated that "the reasonableness of a person's expectation of privacy depends on a two-part test:

1. Whether, by his conduct, the individual has exhibited an expectation of privacy; and
2. This expectation is one that society recognizes as reasonable."
3. Customs, community norms, and practices may, therefore, limit or extend an individual's "reasonable expectation of privacy." Hence, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case (*Ople v. Torres*, G.R. No. 127685, July 23, 1998).

Q: Sps. Hing were owner of a parcel of land and Aldo Inc. constructed an auto-repair shop building on the adjacent lot. Aldo filed a case for injunction and damages claiming that the Sps. Hing were constructing a fence without valid permit and that the construction would destroy their building. The case was dismissed for failure of Aldo to substantiate its allegations. Aldo Inc. then installed two cameras on their building facing the property of the Sps. Hing. The spouses contend that the installation of the cameras was

an invasion of their privacy. Is there a limitation on the installation of surveillance cameras?

A: YES. In this day and age, video surveillance cameras are installed practically everywhere for the protection and safety of everyone. The installation of these cameras, however, should not cover places where there is reasonable expectation of privacy, unless the consent of the individual, whose right to privacy would be affected, was obtained. Nor should these cameras be used to pry into the privacy of another's residence or business office as it would be no different from eavesdropping, which is a crime under Republic Act No. 4200 or the Anti-Wiretapping Law (*Sps. Hing v. Choachuy*, G.R. No. 179736, June 26, 2013).

Prohibited Acts under the Anti-Wire Tapping Law (R.A. No. 4200) (2009 Bar)

1. To tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described by any person, not being authorized by all the parties to any private communication or spoken word;
2. To knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law;
3. To replay the same for any other person or persons;
4. To communicate the contents thereof, either verbally or in writing; or
5. To furnish transcriptions thereof, whether complete or partial, to any other person.

NOTE: The law does not distinguish between a party to the private communication or a third person. Hence, both a party and a third person could be held liable under R.A. 4200 if they commit any of the prohibited acts under R.A. 4200 (*Ramirez v. CA*, G.R. No. 93833, September 28, 1995).

Under *Sec. 3 of RA 4200*, a peace officer, who is authorized by a written order of the Court, may execute any of the acts declared to be unlawful in Sec. 1 and Sec. 2 of the said law in cases involving the crimes of:

1. Treason;
2. Espionage;



3. Provoking war and disloyalty in case of war;
4. Piracy and mutiny in the high seas;
5. Rebellion (conspiracy and proposal and inciting to commit included);
6. Sedition (conspiracy, inciting included)
7. Kidnapping; and
8. Violations of CA 616 (*punishing espionage and other offenses against national security*).

The use of telephone extension is not a violation of R.A. 4200 (*Anti-WireTapping Law*). The use of a telephone extension to overhear a private conversation is neither among those devices, nor considered as a similar device, prohibited under the law (*Gaanan v. IAC, G.R. No. L-69809 October 16, 1986*).

Forms of Correspondence covered:

1. Letters;
2. Messages;
3. Telephone calls; and
4. Telegrams and the like.

Q: Ester S. Garcia, in a confrontation with Socorro Ramirez, allegedly vexed, insulted, and humiliated Ramirez in a "hostile and furious mood" and in a manner offensive to Ramirez's dignity and personality. Ramirez then filed a civil case for damages against Garcia. In support of her claim, Ramirez produced a verbatim transcript of the event. The transcript on which the civil case was based was culled from a tape recording of the confrontation.

As a result of Ramirez's recording of the event, Garcia filed a criminal case for violation of RA 4200, alleging that the act of secretly taping the confrontation was illegal. Ramirez contends that the facts charged do not constitute an offense. Was there a violation of R.A. 4200?

A: YES. The unambiguity of the express words of the provision, taken together with the above-quoted deliberations from the Congressional Record, therefore plainly supports the view held by the respondent court that the provision seeks to penalize even those privy to the private communications. Where the law makes no distinctions, one does not distinguish.

The nature of the conversations is immaterial to a violation of the statute. The substance of the same need not be specifically alleged in the information. The mere allegation that an individual made a secret recording of a private communication by means of a

tape recorder would suffice to constitute an offense under Section 1 of R.A. 4200. As the Solicitor General pointed out in his COMMENT before the respondent court: "Nowhere (in the said law) is it required that before one can be regarded as a violator, the nature of the conversation, as well as its communication to a third person should be professed."

The phrase "private communication" in Section 1 of R.A. 4200 is broad enough to include verbal or non-verbal, written or expressive communications of "meanings or thoughts" which are likely to include the emotionally-charged exchange between petitioner and private respondent, in the privacy of the latter's office (*Ramirez v. CA, G.R. No. 93833, September 28, 1995*).

Q: DOJ Secretary Raul Gonzales warned that reporters who had copies of the compact disc (CD) and those broadcasting or publishing its contents could be held liable under the Anti-Wiretapping Act. Secretary Gonzales also ordered the NBI to go after media organizations "found to have caused the spread, the playing and the printing of the contents of a tape" of an alleged wiretapped conversation involving the President about fixing votes in 2004 national elections. Can the DOJ Secretary use the Anti-Wiretapping act as a regulatory measure to prohibit the media from publishing the contents of the CD?

A: NO. The Court ruled that not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. There are laws of great significance but their violation, by itself and without more, cannot support suppression of free speech and free press. In fine, violation of law is just a factor, a vital one to be sure, which should be weighed in adjusting whether to restrain freedom of speech and of the press. The totality of the injurious effects of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press. By all means, violations of law should be vigorously prosecuted by the State for they breed their own evil consequence. But to repeat, the need to prevent their violation cannot *per se* trump the exercise of free speech and free press, a preferred right whose breach can lead to greater evils (*Chavez v. Gonzales, G.R. No. 168338, February 15, 2008*).

Q: Discuss why A.O. 308 (Prescribing for a National ID system for all citizens) should be declared unconstitutional.

A: The lack of proper safeguards in this regard of A.O 308 may enable unscrupulous persons to access



confidential information and circumvent the right against self-incrimination; it may pave the way for “fishing expeditions” by government authorities and evade the right against unreasonable searches and seizures. They threaten the very abuses that the BoR seeks to prevent.

The right to privacy is one of the most threatened rights of man living in a mass society. In *Ople v Torres*, the threat comes from the executive branch of the government which by issuing A.O. 308 pressures the people to surrender their privacy by giving information about themselves.

Exclusionary rule

Any evidence obtained in violation of the Constitution shall be inadmissible for any purpose in any proceeding. However, in the absence of governmental interference, the protection against unreasonable search and seizure cannot be extended to acts committed by private individuals (*People v. Marti*, G.R. No. 78109, January 18, 1991).

NOTE: This rule is commonly known as “The fruit of the poisonous tree.”

Q: Can the exclusionary rule be applied as against private individuals who violate the right to privacy?

A: **Yes.** Although generally, the Bill of Rights can only be invoked against violations of the government, the Court has recognized an instance where it may also be applied as against a private individual.

Letters of a husband’s paramour kept inside the husband’s drawer, presented by the wife in the proceeding for legal separation, is not admissible in evidence. The reason is that marriage does not divest one of his/her right to privacy of communication (*Zulueta v. CA*, G.R. No. 107383, February 20, 1996).

WRIT OF HABEAS DATA

Writ of habeas data

It is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved

party (*The Rule on the Writ of Habeas Data*, A. M. No. 08-1-16-SC, Sec. 1, January 22, 2008).

NOTE: Availment of the writ requires the existence of a nexus between the right of privacy and the right to life, liberty, or security.

Reliefs available in the petition for issuance of writ of habeas data

1. Updating, rectification, suppression, or destruction of the database or information or files kept by the respondent;
2. In case of threats of the unlawful act, the relief may include a prayer for an order enjoining the act complained of; and
3. A general prayer for other reliefs that are just and equitable under the circumstances is also allowed.

When Writ of Habeas Data is not applicable

A writ of *habeas data* may not be issued to protect purely property and commercial concerns nor when the grounds invoked in support of the petitions therefore are vague or doubtful.

NOTE: It bears reiteration that like the writ of *amparo*, *habeas data* was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing rules (*Manila Electric Company v. Lim*, GR. No. 184769, October 5, 2010).

Who May File a petition for the writ of habeas data

Any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party (*The Rule on the Writ of Habeas Data*, A. M. No. 08-1-16-SC, Sec. 1, January 22, 2008).

However, in cases of extralegal killings and enforced disappearances, the petition may be filed by:

- a. Any member of the immediate family of the aggrieved party, namely: the spouse, children and parents; or
- b. Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity



or affinity, in default of those mentioned in the preceding paragraph (*The Rule on the Writ of Habeas Data, A. M. No. 08-1-16-SC, Sec. 2, January 22, 2008*).

Right to Informational Privacy

It is usually defined as the right of individuals to control information about themselves.

With the availability of numerous avenues for information gathering and data sharing nowadays, not to mention each system's inherent vulnerability to attacks and intrusions, there is more reason that every individual's right to control said flow of information should be protected and that each individual should have at least a reasonable expectation of privacy in cyberspace. Several commentators regarding privacy and social networking sites, however, all agree that given the millions of online social network users, "in this Social Networking environment, privacy is no longer grounded in reasonable expectations, but rather in some theoretical protocol better known as wishful thinking."

It is due to this notion that the Court saw the pressing need to provide for judicial remedies that would allow a summary hearing of the unlawful use of data or information and to remedy possible violations of the right to privacy. The South African High Court, in its Decision in the landmark case, *H v. W*, recognized that "the law has to take into account the changing realities not only technologically but also socially or else it will lose credibility in the eyes of the people. It is imperative that the courts respond appropriately to changing times, acting cautiously and with wisdom." Consistent with this, the Court, by developing what may be viewed as the Philippine model of the writ of *habeas data*, in effect, recognized that, generally speaking, having an expectation of informational privacy is not necessarily incompatible with engaging in cyberspace activities, including those that occur in OSNs (*Vivares v. St. Theresa's College, G.R. No. 202666, September 29, 2014*).

The writ of habeas data is not confined only to extralegal killings and enforced disappearances

Habeas data, to stress, was designed "to safeguard individual freedom from abuse in the information age." As such, it is erroneous to limit its applicability to extralegal killings and enforced disappearances only.

The writ of *habeas data*, however, can be availed of as an independent remedy to enforce one's right to privacy, more specifically the right to informational

privacy. The remedies against the violation of such right can include the updating, rectification, suppression or destruction of the database or information or files in possession or in control of respondents (*Ibid.*).

FREEDOM OF EXPRESSION (1992, 1998, 2002, 2003, 2007, 2008, 2009 Bar)

No law shall be passed abridging the freedom of speech, of expression, or of the press, or of the right of the people peaceably to assemble and petition the government for redress of grievances (*Art. III, Sec. 4, 1987 Philippine Constitution*).

Rationale

People are kept from any undue interference from the government in their thoughts and words. It flows from the philosophy that the authorities do not necessarily know what is best for the people.

Bases for Protection

1. Promotion of truth
2. Enhance principles of democracy
3. Expression of self-fulfillment of citizens

Scope of protected freedom of expression under the Constitution

1. Freedom of speech;
2. Freedom of the press;
3. Right of assembly and to petition the government for redress of grievances;
4. Right to form associations or societies not contrary to law;
5. Freedom of religion; and
6. Right to access to information on matters of public concern.

Protected speech includes every form of expression, whether oral, written, tape or disc recorded. It includes motion pictures as well as what is known as symbolic speech such as the wearing of an armband as a symbol of protest. Peaceful picketing has also been included within the meaning of speech.

Speech is not limited to vocal communication. Conduct is treated as a form of speech sometimes referred to as 'symbolic speech' such that when speech and non-speech elements are combined in the same course of conduct, the 'communicative element' of the conduct may be 'sufficient to bring into play the right to freedom of expression' the form of expression is just as important as the information conveyed that it forms part of the expression



BILL OF RIGHTS

(*Diocese of Bacolod v. Commission on Elections, G.R. No. 205728, January 21, 2015*).

Limitations on freedom of expression (2014 Bar)

It should be exercised within the bounds of laws enacted for the promotion of social interests and the protection of other equally important individual rights such as:

1. Laws against obscenity, libel and slander (contrary to public policy);
2. Right to privacy of an individual;
3. Right of state/government to be protected from seditious attacks;
4. Legislative immunities;
5. Fraudulent matters;
6. Advocacy of imminent lawless conducts;
7. Fighting words; and
8. Guarantee implies only the right to reach a willing audience but not the right to compel others to listen, see or read.

Unprotected Speech/Expression vs. Protected Speech/Expression

UNPROTECTED SPEECH	PROTECTED SPEECH
<ul style="list-style-type: none"> • General guidelines; • obscenity; • incitement inimical to national security; • false or misleading advertisement; • libelous speech; • hate speech; • contumacious speech 	<ul style="list-style-type: none"> • All those excluded from unprotected expression and may include: • Utterances critical of public conduct; • ordinary commercial speech; • satirical speech/comedy

Four aspects of freedom of speech and press

1. *Freedom from censorship or prior restraint* – see discussion on prior restraint, pg. 27.
2. *Freedom from subsequent punishment to publication* – see discussion on subsequent punishment, pg. 28.
3. *Freedom of access to information regarding matters of public interest* – Official papers, reports and documents, unless held confidential and secret by competent authority in the public interest, are public records. As such, they are open and subject to regulation, to the scrutiny of the inquiring reporter or editor. Information obtained confidentially may be printed without specification of the source; and that source is closed to official inquiry, unless

the revelation is deemed by the courts, or by a House or committee of the Congress, to be vital to the security of the State.

4. *Freedom of circulation* – Refers to the unhampered distribution of newspapers and other media among customers and among the general public. It may be interfered with in several ways. The most important of these is *censorship*. Other ways include requiring a permit or license for the distribution of media and penalizing dissemination of copies made without it, and requiring the payment of a fee or tax, imposed either on the publisher or on the distributor, with the intent to limit or restrict circulation. These modes of interfering with the freedom to circulate have been constantly stricken down as unreasonable limitations on press freedom (*Chavez v. Gonzales G.R. No. 168338, February 15, 2008*). (2014 Bar)

NOTE: There need not be total suppression; even restriction of circulation constitutes censorship.

Free Speech Theories

1. *Deliberative democracy* – includes the right of the people to participate in public affairs, including the right to criticize government actions.
2. *Market place of ideas* – free speech should be encouraged.
3. *Self-expression* – free speech enhances human dignity and is a means of assuring individual self-fulfillment.
4. *Marker for group identity*.
5. *Protection for individuals and minorities against majoritarian abuses*.
6. *Safety valve* – nonviolent manifestations of dissent reduce the likelihood of violence (*Diocese of Bacolod v. COMELEC, G. R. No. 205728, January 21, 2015, cited in Cruz and Cruz, Constitutional Law, 2015 Ed., p. 474*).

Paradigms of Free Speech

1. *Equality-based approach* – politically disadvantaged speech prevails over regulation but regulation promoting political equality prevails over speech. This view allows the government leeway to redistribute or equalize 'speaking power,' such as protecting, even implicitly subsidizing, unpopular or dissenting voices often systematically subdued within society's ideological ladder. This view acknowledges that there are dominant political actors who, through authority, power, resources, identity, or status, have capabilities that may drown out the messages of others. This is especially true in a developing or emerging economy



that is part of the majoritarian world like ours.

2. *Contrary approach* – Considerations of equality of opportunity or equality in the ability of citizens as speakers should not have a bearing in free speech doctrine. Under this view, “members of the public are trusted to make their own individual evaluations of speech, and government is forbidden to intervene for paternalistic or redistributive reasons . . . [thus,] ideas are best left to a freely competitive ideological market.” This is consistent with the libertarian suspicion on the use of viewpoint as well as content to evaluate the constitutional validity or invalidity of speech” (*Ibid.*).

Political Speech

Political speech is one of the most important expressions protected by the Fundamental Law. “and have to be protected at all costs for the sake of democracy.” (*GMA Network v. COMELEC, G.R. No. 205357, September 2, 2014*). Political speech is motivated by the desire to be heard and understood, to move people to action. It is concerned with the sovereign right to change the contours of power whether through the election of representatives in a republican government or the revision of the basic text of the Constitution. We evaluate restrictions on freedom of expression from their effects. We protect both speech and medium because the quality of this freedom in practice will define the quality of deliberation in our democratic society (*Diocese of Bacolod v. COMELEC, G. R. No. 205728, January 21, 2015*).

Q: Social Weather Station (SWS) questions COMELEC Resolution 9674 requiring them to disclose the names of commissioners and/or payors of election surveys on the ground that it is a curtailment of free speech. Decide.

A: SWS is wrong. The names of those who commission or pay for election surveys, including subscribers of survey firms, must be disclosed pursuant to Section 5.2(a) of the Fair Election Act. This requirement is a valid regulation in the exercise of police power and effects the constitutional policy of guaranteeing equal access to opportunities for public service. Section 5.2(a)’s requirement of disclosing subscribers neither curtails petitioners’ free speech rights nor violates the constitutional proscription against the impairment of contracts. Concededly, what are involved here are not election propaganda per se. Election surveys, on their face, do not state or allude to preferred candidates. When

published, however, the tendency to shape voter preferences comes into play. In this respect, published election surveys partake of the nature of election propaganda. It is then declarative speech in the context of an electoral campaign properly subject to regulation. Hence, Section 5.2 of the Fair Election Act’s regulation of published surveys.

It is settled that constitutionally declared principles are a compelling state interest. Here, we have established that the regulation of election surveys effects the constitutional policy, articulated in Article II, Section 26, and reiterated and affirmed in Article IX-C, Section 4 and Article XIII, Section 26 of the 1987 Constitution, of guaranteeing equal access to opportunities for public service.

While it does regulate expression (i.e., petitioners’ publication of election surveys), it does not go so far as to suppress desired expression. There is neither prohibition nor censorship specifically aimed at election surveys. The freedom to publish election surveys remains. All Resolution No. 9674 does is articulate a regulation as regards the manner of publication, that is, that the disclosure of those who commissioned and/or paid for, including those subscribed to, published election surveys must be made (*Social Weather Station v. COMELEC, G.R. No. 208062, April 7, 2015*).

Captive-Audience Doctrine

When a listener cannot, as a practical matter, escape from intrusive speech, the speech can be restricted. It recognizes that a listener has a right not to be exposed to an unwanted message in circumstances in which the communication cannot be avoided. A regulation based on the captive-audience doctrine is in the guise of censorship, which undertakes selectively to shield the public from some kinds of speech on the ground that they are more offensive than others. Such selective restrictions have been upheld only when the speaker intrudes on the privacy of the home or the degree of captivity makes it either impossible or impractical for the unwilling viewer or auditor to avoid exposure. Thus, a government regulation based on the captive-audience doctrine may not be justified if the supposed “captive audience” may avoid exposure to the otherwise intrusive speech (*1-United Transport Koalisyon v. COMELEC, G.R. No. 206020, April 14, 2015*).

Q: COMELEC Resolution No. 9615 deviated from the previous COMELEC resolutions relative to the airtime limitations on political advertisements. It computes the airtime on an aggregate basis involving all the media of broadcast communications compared to the past



where it was done on a per station basis. The result of which is the reduction of the allowable minutes within which candidates and political parties would be able to campaign through the air. Did COMELEC commit grave abuse of discretion in issuing said resolution?

A: YES. The assailed rule on “aggregate-based” airtime limits is unreasonable and arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people. Here, the adverted reason for imposing the “aggregate-based” airtime limits – leveling the playing field – does not constitute a compelling state interest which would justify such a substantial restriction on the freedom of candidates and political parties to communicate their ideas, philosophies, platforms and programs of government. And, this is specially so in the absence of a clear-cut basis for the imposition of such a prohibitive measure. In this particular instance, what the COMELEC has done is analogous to letting a bird fly after one has clipped its wings.

It is also particularly unreasonable and whimsical to adopt the aggregate-based time limits on broadcast time when we consider that the Philippines is not only composed of so many islands. There are also a lot of languages and dialects spoken among the citizens across the country. Accordingly, for a national candidate to really reach out to as many of the electorates as possible, then it might also be necessary that he conveys his message through his advertisements in languages and dialects that the people may more readily understand and relate to. To add all of these airtimes in different dialects would greatly hamper the ability of such candidate to express himself – a form of suppression of his political speech.

COMELEC itself states that “[t]elevision is arguably the most cost-effective medium of dissemination. Even a slight increase in television exposure can significantly boost a candidate’s popularity, name recall and electability.” If that be so, then drastically curtailing the ability of a candidate to effectively reach out to the electorate would unjustifiably curtail his freedom to speak as a means of connecting with the people.

Finally on this matter, it is pertinent to quote what Justice Black wrote in his concurring opinion in the landmark *Pentagon Papers* case: “In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of

government and inform the people. Only a free and unrestrained press can effectively expose deception in government.” (*GMA Network v. COMELEC*, G.R. No. 205357, September 2, 2014).

Q: Members of the faculty of the University of the Philippines College of Law published a statement on the allegations of plagiarism and misrepresentation relative to a certain Court’s decision. Essentially, the faculty calls for the resignation of Justice Mario Pascual in the face of allegations of plagiarism in his work. Does this act of the faculty members squarely fall under the freedom of speech and expression?

A: NO. The publication of a statement by the faculty of the University of the Philippines College regarding the allegations of plagiarism and misrepresentation in the Supreme Court was totally unnecessary, uncalled for and a rash act of misplaced vigilance. While most agree that the right to criticize the judiciary is critical to maintaining a free and democratic society, there is also a general consensus that healthy criticism only goes so far. Many types of criticism leveled at the judiciary cross the line to become harmful and irresponsible attacks. These potentially devastating attacks and unjust criticism can threaten the independence of the judiciary (*Re: Letter of the UP Law Faculty entitled “Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court.”*, A.M. No. 10-10-4-SC, October 19, 2010).

PRIOR RESTRAINT (CENSORSHIP) (2014 Bar)

Refers to the official government restrictions on the press or other forms of expression in advance of actual publication or dissemination (*Bernas, The 1987 Philippine Constitution A Comprehensive Reviewer*, 2006).

NOTE: There need not be total suppression.

Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain



newspapers, resulting in the discontinuation of their printing and publication, are deemed as previous restraint or censorship. Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts (*Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008).

Exceptions to the prohibition of prior restraint

1. Pornography;
2. False or Misleading Advertisement;
3. Advocacy of Imminent Lawless Actions; and
4. Danger to National Security (*Soriano v. Laguardia*, G.R. No. 165636, April 29, 2009).

Near v. Minnesota, 283 US 697 (1931) adds the following to the enumeration:

1. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right;
2. The primary requirements of decency may be enforced against obscene publications; and
3. The security of community life may be protected against incitements to acts of violence and the overthrow by force of orderly government.

Provisions of the Revised Penal Code on Libel and the provision of the Cyber Crime Law on cyber libel are constitutional

Libel is not a constitutionally protected speech and that the government has an obligation to protect private individuals from defamation. Indeed, cyber libel is actually not a new crime since Art. 353, in relation to Art. 355 of the penal code, already punishes it. In effect, Sec. 4(c)(4) merely affirms that online defamation constitutes "similar means" for committing libel. Furthermore, the United Nations Human Rights Committee did not actually enjoin the Philippines to decriminalize libel. It simply suggested that defamation laws be crafted with care to ensure that they do not stifle freedom of expression. Free speech is not absolute. It is subject to certain restrictions, as may be necessary and as may be provided by law (*Disini v. Secretary of Justice*, G.R. No. 203335 February 11, 2014).

NOTE: In her dissenting and concurring opinion, Chief Justice Maria Lourdes Sereno posits that the *ponencia* correctly holds that libel is not a constitutionally protected conduct. It is also correct

in holding that, generally, penal statutes cannot be invalidated on the ground that they produce a "chilling effect," since by their very nature, they are intended to have an *in terrorem effect* (benign chilling effect) to prevent a repetition of the offense and to deter criminality. The "chilling effect" is therefore equated with and justified by the intended *in terrorem effect* of penal provisions.

Thus, when Congress enacts a penal law affecting free speech and accordingly imposes a penalty that is so discouraging that it effectively creates an "invidious chilling effect," thus impeding the exercise of speech and expression altogether, then there is a ground to invalidate the law. In this instance, it will be seen that the penalty provided has gone beyond the *in terrorem effect* needed to deter crimes and has thus reached the point of encroachment upon a preferred constitutional right.

Two kinds of chilling effect

BENIGN CHILLING EFFECT	INVIDIOUS CHILLING EFFECT
May be caused by penal statutes which are intended to have an <i>in terrorem effect</i> to prevent a repetition of the offense and to deter criminality. The chilling effect is equated with and justified by the intended <i>in terrorem effect</i> of penal provisions.	May be caused by penal laws affecting free speech and accordingly imposes a penalty that is so discouraging thus impeding the exercise of speech and expression altogether.
Permissible	Not Permissible

Q: Nestor posted on Facebook that Juan Dela Cruz, a married person, has an illicit affair with Maria. Dexter liked this post and commented: "Yes! This is true! What an immoral thing to do?!" This post was likewise liked by 23 people. Juan Dela Cruz filed a case for online libel against Nestor, Dexter and 23 other people who liked the post using as his basis Sec. 5 of the Cybercrime law which penalizes any person who willfully abets or aids in the commission of any of the offenses enumerated in the said law. Is this provision of the law constitutional?

A: NO. Section 5 with respect to Section 4(c)(4) is unconstitutional. Its vagueness raises apprehension on the part of internet users because of its obvious chilling effect on the freedom of expression, especially since the crime of aiding or abetting ensnares all the actors in the cyberspace front in a fuzzy way. What is more, as the petitioners point



out, formal crimes such as libel are not punishable unless consummated. In the absence of legislation tracing the interaction of netizens and their level of responsibility such as in other countries, Section 5, in relation to Section 4(c)(4) on Libel, Section 4(c)(3) on Unsolicited Commercial Communications, and Section 4(c)(2) on Child Pornography, cannot stand scrutiny(*Ibid.*).

FREEDOM FROM SUBSEQUENT PUNISHMENT

A limitation on the power of the State from imposing a punishment after publication or dissemination. Without this assurance, the individual would hesitate to speak for fear that he might be held to account for his speech, or that he might be provoking the vengeance of the officials he may have criticized (*Nachura, Outline Reviewer in Political Law, p. 152*).

This second basic prohibition of the free speech and press clause prohibits systems of subsequent punishment which have the effect of unduly curtailing expression.

NOTE: Freedom from subsequent punishment is not absolute; it may be properly regulated in the interest of the public. The State may validly impose penal and/or administrative sanctions such as in the following:

1. *Libel* – A public and malicious imputation of a crime, vice or defect, real or imaginary or any act omission, status tending to cause dishonor, discredit or contempt of a natural or judicial person, or blacken the memory of one who is dead (*Art 353, Revised Penal Code*).
2. *Obscenity* – In *Pita v. Court of Appeals*, the Supreme Court declared that the determination of what is obscene is a judicial function (*Pita v. CA, G.R. No. 80806, October 5, 1989*).
3. *Criticism of Official Conduct* – In *New York Times v. Sullivan, 376 US 254, March 9, 1964*, the constitutional guarantee requires a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice.
4. *Rights of students to free speech in school premises not absolute* – The school cannot suspend or expel a student solely on the basis of the articles he has written except when such article materially disrupts class work or involves substantial disorder or invasion of

rights of others(*Miriam College Foundation v. CA, GR 127930, December 15, 2000*).

Doctrine of Fair Comment

GR: Every discreditable public imputation is false because every man is presumed innocent, thus, every false imputation is deemed malicious, hence, actionable.

XPN: When the discreditable imputation is directed against a public person in his public capacity, such is not necessarily actionable.

NOTE: For it to be actionable, it must be shown that either there is a false allegation of fact or comment based on a false supposition.

XPN to the XPN: If the comment is an expression of opinion, based on established facts; it is immaterial whether the opinion happens to be mistaken, as long as it might reasonably be inferred from facts (*Borjal v. CA, G.R. No. 126466, January 14, 1999*).

Freedom of the Press

The guaranty of freedom to speak is useless without the ability to communicate and disseminate what is said. And where there is a need to reach a large audience, the need to access the means and media for such dissemination becomes critical. This is where the press and broadcast media come along.

In the ultimate analysis, when the press is silenced, or otherwise muffled in its undertaking of acting as a sounding board, the people ultimately would be the victims (*GMA Network v. COMELEC, G.R. No. 205357, September 2, 2014*).

Q: A national daily newspaper carried an exclusive report stating that Senator Bal Bass received a house and lot located at YY Street, Makati, in consideration for his vote to cut cigarette taxes by 50%. The Senator sued the newspaper, its reporter, editor and publisher for libel, claiming the report was completely false and malicious. According to the Senator, there is no YY Street in Makati, and the tax cut was only 20%. He claimed one million pesos in damages. The defendants denied "actual malice," claiming privileged communication and absolute freedom of the press to report on public officials and matters of public concern. If there was any error, the newspaper said it would publish the correction promptly. Are the defendants liable for damages?

A: NO. Since Senator Bal Bass is a public person and the questioned imputation is directed against him in his public capacity, in this case actual malice means



the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not. Since there is no proof that the report was published with knowledge that it is false or with reckless disregard of whether it was false or not, the defendants are not liable for damages (*Borjal v. CA, G.R. No. 126466, January 14, 1999*).

The *Borjal* doctrine is not applicable in a case where the allegations against a public official were false and no effort was exerted to verify the information before publishing his articles.

Borjal may have expanded the protection of qualified privileged communication beyond the instances given in Art. 354 of the RPC, but this expansion does not cover such a case. The expansion speaks of "fair commentaries on matters of public interest." While *Borjal* places fair commentaries within the scope of qualified privileged communication, the mere fact that the subject of the article is a public figure or a matter of public interest does not automatically exclude the author from liability. His articles cannot even be considered as qualified privileged communication under the second paragraph of Art. 354 of the RPC, which exempts from the presumption of malice a fair and true report. Good faith is lacking (*Tulfo v. People, G.R. No. 161032, September 16, 2008*).

Types of Privileged Communications

1. *Absolutely Privileged* –those which are not actionable even if the actor acted in bad faith

e.g.: Art. VI, Sec 11, of the 1987 Constitution, which exempts a member of Congress from liability of any speech or debate in the Congress or in any Committee thereof.

2. *Qualifiedly Privileged* - defamatory imputations are not actionable unless found to have been made without good intention or justifiable motive. To this genre belong "private communications" and "fair and true report without any comments or remarks" (*Borjal v. CA, G.R. No. 126466, January 14, 1999*).

Q: Wincy Diez penned several articles in Malaya newspaper regarding alleged bribery incidents in the Supreme Court and characterizing the justices as "thieves" and "a basket of rotten apples." The Court *En Banc* required Wincy to explain why no sanction should be imposed on her for indirect contempt of court. Did the order of the Court violate freedom of the press?

A: NO. While freedom of speech, of expression and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy, these freedoms are not absolute. For, if

left unbridled, they have the tendency to be abused and can translate to licenses, which could lead to disorder and anarchy. Erika crossed the line, as hers are baseless scurrilous attacks which demonstrate nothing but an abuse of press freedom. They leave no redeeming value in furtherance of freedom of the press. They do nothing but damage the integrity of the High Court, undermine the faith and confidence of the people in the judiciary, and threaten the doctrine of judicial independence (*In Re: Allegations Contained in the Columns of Mr. Amado P. Macasaet, A.M. No. 07-09-13-SC, August 8, 2008*).

CONTENT-BASED & CONTENT-NEUTRAL REGULATION

CONTENT-NEUTRAL REGULATION	CONTENT-BASED RESTRAINT
Merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards.	The restriction is based on the subject matter of the utterance or speech. The cast of the restriction determines the test by which the challenged act is assailed with.
No presumption of unconstitutionality.	There is presumption of unconstitutionality. NOTE: The burden of proof to overcome the presumption of unconstitutionality is with the government.
Test to be used: Intermediate Approach.	Test to be used: Clear and Present Danger.

TESTS

Intermediate Approach Test

Used when the speech restraints take the form of a content-neutral regulation, only a substantial governmental interest is required for its validity. Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an intermediate approach—somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions. The test is called intermediate because the Court will not merely



rubberstamp the validity of a law but also require that the restrictions be narrowly-tailored to promote an important or significant governmental interest that is unrelated to the suppression of expression (*Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008).

NOTE: A law is narrowly-tailored if it is for the advancement of state's interest, if it does not restrict a significant amount of speech that does not implicate the government interest and if it is the least restrictive alternative available to serve such interest (*Eugene Volokh, Freedom of Speech, Permissible Tailoring and Transcending Strict Scrutiny*, 144 U. Pennsylvania L. Rev. 2417, 1997).

Clear and Present Danger Test (2014 Bar)

The government must also show the type of harm the speech sought to be restrained would bring about— especially the gravity and the imminence of the threatened harm – otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, “but only by showing a substantive and imminent evil that has taken the life of a reality already on ground.” As formulated, “the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.” The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression (*Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008).

APPLICATIONS

Q: The NTC issued a warning that that the continuous airing or broadcast by radio and television stations of the alleged wiretapped conversation involving the President allegedly fixing votes in the 2004 national elections is a continuing violation of the Anti-Wiretapping Law and shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies. Were the rights to freedom of expression and of the press, and the right of the people to information on matters of public concern violated by such warning of the NTC?

A: YES. Said rights were violated applying the clear and present danger test. The challenged acts need to be subjected to the clear and present danger rule, as they are content-based restrictions. The acts of NTC and the DOJ Sec. focused solely on but one object—a

specific content— fixed as these were on the alleged taped conversations between the President and a COMELEC official. Undoubtedly these did not merely provide regulations as to the time, place or manner of the dissemination of speech or expression.

A governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny, with the government having the burden of overcoming the presumed unconstitutionality by the clear and present danger rule. It appears that the great evil which government wants to prevent is the airing of a tape recording in alleged violation of the anti-wiretapping law.

The evidence falls short of satisfying the clear and present danger test. Firstly, the various statements of the Press Secretary obfuscate the identity of the voices in the tape recording. Secondly, the integrity of the taped conversation is also suspect. The Press Secretary showed to the public two versions, one supposed to be a “complete” version and the other, an “altered” version. Thirdly, the evidence on the who's and the how's of the wiretapping act is ambivalent, especially considering the tapes' different versions. The identity of the wire-tappers, the manner of its commission and other related and relevant proofs are some of the invisibles of this case. Fourthly, given all these unsettled facets of the tape, it is even arguable whether its airing would violate the Anti-Wiretapping Law. There is no showing that the feared violation of the anti-wiretapping law clearly endangers the national security of the State(*Ibid.*).

FACIAL CHALLENGES AND OVERBREADTH DOCTRINE

Facial Challenge (2015 Bar)

A challenge to a statute in court, in which the plaintiff alleges that the legislation is always, and under all circumstances, unconstitutional, and therefore void.

NOTE: Facial challenge to a statute is allowed only when it operates in the area of freedom of expression. Invalidation of the statute on its face, rather than as applied, is permitted in the interest of preventing a chilling effect on freedom of expression(*Separate opinion of Justice Mendoza in Cruz v. Secretary of Environment and Natural Resources*, G.R. No. 135385, December 6, 2000).



Facial Challenge vs. "As-applied" Challenge

FACIAL CHALLENGE	"AS-APPLIED" CHALLENGE
An examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.	Considers only extant facts affecting real litigants

(*Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010).

Q: Is facial challenge to a penal statute allowed?

A: NO. Facial challenges are not allowed in penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech (*KMU v. Ermita*, G.R. No. 17855, October 5, 2010).

NOTE: A litigant cannot thus successfully mount a facial challenge against a criminal statute on either vagueness or overbreadth grounds.

The rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged (*Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010).

Overbreadth Doctrine (2010, 2014 Bar)

The overbreadth doctrine decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms (*Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010).

NOTE: The application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases.

The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of the third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates court to depart from the normal adjudicatory rules is the concern with the "chilling," deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties (*Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010).

TESTS

Tests for valid governmental interference to freedom of expression

1. Clear and Present Danger Test

Question: Whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree (*Schenck v. US*, 249 US 47, March 3 1919).

Emphasis: The danger created must not only be clear and present but also traceable to the ideas expressed (*Gonzales v. COMELEC*, G.R. No. L-27833, April 18, 1969).

2. Dangerous Tendency Test



Question: Whether the speech restrained has a rational tendency to create the danger apprehended, be it far or remote, thus government restriction would then be allowed. It is not necessary though that evil is actually created for mere tendency towards the evil is enough.

Emphasis: Nature of the circumstances under which the speech is uttered, though the speech per se may not be dangerous.

3. Grave-but-Improbable Danger Test

Question: Whether the gravity of the evil, discounted by its improbability, justifies such an invasion of free speech as is necessary to avoid the danger (*Dennis v. US*, 341 US 494, June 4 1951).

4. Balancing of interest Test

Question: Which of the two conflicting interests (not involving national security crimes) demands the greater protection under the particular circumstances presented:

- a. When particular conduct is regulated in the interest of public order
- b. And the regulation results in an indirect, conditional and partial abridgement of speech (*Gonzales v. COMELEC*, G.R. No. L-27833, April 18, 1969).

5. O'Brien Test

Question: in situations when "speech" and "non-speech" elements are combined in the same course of conduct, whether there is a sufficiently important governmental interest that warrants regulating the non-speech element, incidentally limiting the "speech" element.

NOTE: A government regulation is valid if:

- a. It is within the constitutional power of the government;
- b. In furtherance of an important or substantial governmental interest;
- c. Governmental interest is unrelated to the suppression of free expression; and
- d. The incidental restriction on the freedom is essential to the furtherance of that interest (*US v. O'Brien*, 391 US 367, May 27, 1968; *SWS v. COMELEC*, G.R. No. 147571, May 5, 2001).

6. Direct Incitement Test

Question: What words did a person utter and what is the likely result of such utterance?

Emphasis: The very words uttered, and their ability to directly incite or produce imminent lawless action.

NOTE: It criticizes the clear and present danger test for being too dependent on the specific circumstances of each case.

7. Roth Test on Obscenity

Question: Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest (*Gonzales v. Kalaw-Katigbak*, G.R. No. L-69500, July 22, 1985).

8. Miller Test on Indecent Speech

Question: Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and the work, taken as whole, lacks serious literary, artistic, political, or scientific value (*Soriano v. Laguardia*, G.R. No. 164785, March 15, 2010).

STATE REGULATION OF DIFFERENT TYPES OF MASS MEDIA

Live Media Coverage of Court Proceedings

The propriety of granting or denying permission to the media to broadcast, record, or photograph court proceedings involves weighing the constitutional guarantees of freedom of the press, the right of the public to information and the right to public trial, on the one hand, and on the other hand, the due process rights of the defendant and the inherent and constitutional power of the courts to control their proceedings in order to permit the fair and impartial administration of justice. Collaterally, it also raises issues in the nature of media, particularly television and its role in society, and of the impact of new technologies on law.

Considering the prejudice it poses to the defendant's right to due process as well as to the fair and orderly administration of justice and considering further that the freedom of the press and the right of the people to information may be served and satisfied by less distracting, degrading and prejudicial means,



live radio and television coverage of court proceedings shall not be allowed. Video footages of court hearings for news purposes shall be restricted and limited to shots of the courtroom, the judicial officers, the parties and their counsel taken prior to the commencement of official proceedings. No video shots or photographs shall be permitted during the trial proper.

An accused has a right to a public trial but it is a right that belongs to him, more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secret conclaves of long ago. A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with proper decorum and observe the trial process (*Secretary of Justice v. Estrada, A.M. No. 01-4-03-SC, September 13, 2001*).

Q: In 2011, the Supreme Court promulgated a Resolution partially granting *pro hac vice* the request for live broadcast by television and radio of the trial court proceedings of the "Maguindanao massacre" cases, subject to specific guidelines set forth in said Resolution. Accused Andal Ampatuan, Jr. filed a Motion for Reconsideration alleging that the Resolution "deprives him of his rights to due process, equal protection, presumption of innocence, and to be shielded from degrading psychological punishment." Ampatuan contends that the Court should accord more vigilance because the immense publicity and adverse public opinion which live media coverage can produce would affect everyone, including the judge, witnesses, and the families of all concerned parties. The OSG, however, contends that the coverage by live media neither constitutes a barbarous act nor inflicts upon the accused inhuman physical harm or torture that is shocking to the conscience and is freedom of the press. Should live broadcast of the trial be disallowed?

A: NO. The Court is now disallowing live media broadcast of the trial of "Maguindanao massacre" cases but is still allowing the filming of the proceedings for (1) the real-time transmission to specified viewing areas, and (2) documentation.

While the Court recognizes the freedom of press and the right to public information, the constitutional rights of the accused provide more than ample justification to take a second look at the view that a camera that broadcasts the proceedings live on television has no place in a criminal trial because of its prejudicial effects on the rights of accused

individuals. As we have previously held, the live coverage of judicial proceedings involve an inherent denial of due process. In this case that has achieved notoriety and sensational status, a greater degree of care is required to safeguard the constitutional rights of the accused. To be in the best position to weigh the conflicting testimonies of the witnesses, the judge must not be affected by any outside force or influence. Like any human being, however, a judge is not immune from the pervasive effects of media.

In a constitutional sense, public trial is not synonymous with publicized trial. The right to a public trial belongs to the accused. The requirement of a public trial is satisfied by the opportunity of the public and press to attend the trial and to report what they have observed. The accused's right to a public trial should not be confused with the freedom of the press and the public's right to know as a justification for allowing the live broadcast of the trial (*Notice of Resolution, In Re: Petition for Radio and TV Coverage of cases against Zaldy Ampatuan, A.M. No. 10-11-5-SC, October 23, 2012*).

Q: Can an offensive and obscene language uttered in a prime-time television broadcast which was easily accessible to the children be reasonably curtailed and validly restrained?

A: YES. In *Soriano v. MTRCB*, G.R. No. 165636, April 29, 2009, the Court, applying the balancing of interest doctrine, ruled that the government's interest to protect and promote the interests and welfare of the children adequately buttresses the reasonable curtailment and valid restraint on petitioner's prayer to continue as program host of *Ang Dating Daan* during the suspension period. Soriano's offensive and obscene language uttered on prime-time television broadcast, without doubt, was easily accessible to the children. His statements could have exposed children to a language that is unacceptable in everyday use. As such, the welfare of children and the State's mandate to protect and care for them, as *parens patriae*, constitute a substantial and compelling government interest in regulating Soriano's utterances in TV broadcast.

NOTE: In his dissenting opinion, Justice Carpio cited *Action for Children's Television v. FCC* which establishes the safe harbor period to be from 10:00 in the evening to 6:00 in the morning, when the number of children in the audience is at a minimum. In effect, between the hours of 10:00 p.m. and 6:00 a.m., the broadcasting of material considered indecent is permitted. Between the hours of 6:00 a.m. and 10:00 p.m., the broadcast of any indecent material may be sanctioned.



COMMERCIAL SPEECH (2012 Bar)

Commercial speech is a separate category of speech which is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression but is nonetheless entitled to protection. The State cannot rob him of this right without violating the constitutionally guaranteed freedom of expression. Unsolicited advertisements are legitimate forms of expression (*Disini v. Secretary of Justice, G.R. No. 203335, February 18, 2014*).

It pertains to communication which “no more than proposes a commercial transaction,” such as Advertisements of goods or of services.

To enjoy protection, commercial speech:

1. Must not be false or misleading; and (*Friedman v. Rogers, 440 US 1, February 21, 1979*)
2. Should not propose an illegal transaction (*Pittsburgh Press Co. v Human Relations Commissions, 413 US 376, June 21, 1973*).

NOTE: However, even truthful and lawful commercial speech may be regulated if:

1. Government has a substantial interest to protect;
2. The regulation directly advances that interest; and
3. It is not more than extensive than is necessary to protect that interest (*Central Hudson Gas & Electric Corp v. Public Service Commission of NY, 447 US 557, June 20, 1980*).

Q: EO 51 (Milk Code) was issued by President Val Antonis on October 28, 1986 by virtue of the legislative powers granted to the President under the Freedom Constitution. On May 15, 2006, the DOH issued Revised Implementing Rules and Regulations (RIRR) which was to take effect on July 7, 2006. The Association of Healthcare Workers claimed that the Milk Code only regulates and does not impose unreasonable requirements for advertising and promotion while RIRR imposes an absolute ban on such activities for breastmilk substitutes intended for infants from 0-24 months old or beyond, and forbids the use of health and nutritional claims. Were the labeling requirements and advertising regulations under the RIRR valid?

A: YES. Sec. 13 on “total effect” and Sec. 26 of Rule VII of the RIRR contain some labeling requirements,

specifically: a) that there be a statement that there is no substitute to breastmilk; and b) that there be a statement that powdered infant formula may contain pathogenic microorganisms and must be prepared and used appropriately. Sec. 16 of the RIRR prohibits all health and nutrition claims for products within the scope of the Milk Code, such as claims of increased emotional and intellectual abilities of the infant and young child. These provisions of the Milk Code expressly forbid information that would imply or create a belief that there is any milk product equivalent to breastmilk or which is humanized or maternalized, as such information would be inconsistent with the superiority of breastfeeding. Thus, the RIRR is a reasonable means of enforcing the Milk Code and deterring circumvention of the protection and promotion of breastfeeding as embodied in the Milk Code (*Pharmaceutical and Health Care Association of the Philippines v. Duque, G.R. No. 173034, October 9, 2007*).

PRIVATE VS. GOVERNMENT SPEECH

GOVERNMENT SPEECH	PRIVATE SPEECH
The government may advance its own speech without requiring viewpoint neutrality when the government itself is the speaker (doctrine was implied in <i>Wooley v. Maynard</i> in 1971).	The right of a person to freely speak one's mind is a highly valued freedom in a republican and democratic society (<i>Ashcroft v. Free Speech Coalition, 535 U.S. 234, April 16, 2002</i>).

HECKLER'S VETO (2014 BAR)

Occurs when an acting party's right to freedom of speech is curtailed or restricted by the government in order to prevent a reacting party's behavior. The term Heckler's Veto was coined by University of Chicago professor of law Harry Kalven.

The “heckler's veto” involves situations in which the government attempts to ban protected speech because it might provoke a violent response. In such situations, “the mere possibility of a violent reaction to protected speech is simply not a constitutional basis on which to restrict the right to speak” (*Roe v. Crawford, 514 F.3d 789, January 22, 2008*).

It may be in the guise of a permit requirement in the holding of rallies, parades, or demonstrations



conditioned on the payment of a fee computed on the basis of the cost needed to keep order in view of the expected opposition by persons holding contrary views (*Gorospe, 2006, citing Forsyth County v. Nationalist Movement, 505 U.S. 123, June 19, 1992*).

FREEDOM OF ASSEMBLY AND PETITION

Right of the people to assemble and petition the government for redress of grievances

The right to assembly is not subject to prior restraint. It may not be conditioned upon the prior issuance of a permit or authorization from government authorities. The right, however, must be exercised in such a way as will not prejudice the public welfare.

Permit system

Before one can use a public place, one must first obtain prior permit from the proper authorities. Such is valid if:

1. It is concerned only with the time, place, and manner of assembly; and
2. It does not vest on the licensing authority unfettered discretion in choosing the groups which could use the public place and discriminate others.

NOTE: Permits are not required for designated freedom parks.

Rules on assembly in public places

1. The applicant should inform the licensing authority of the date, the public place where and the time when the assembly will take place;
2. The application should be filed ahead of time to enable the public official concerned to apprise whether there are valid objections to the grant of the permit or to its grant, but in another public place. The grant or refusal should be based on the application of the Clear and Present Danger Test;
3. If the public authority is of the view that there is an imminent and grave danger of a substantive evil, the applicants must be heard on the matter; and
4. The decision of the public authority, whether favorable or adverse, must be transmitted to the applicants at the earliest opportunity so that they may, if they so desire, have recourse to the proper judicial authority (*Reyes v. Bagatsing, G.R. No. L-65366, November 9, 1983*).

Assembly in private properties

Only the consent of the owner of the property or person entitled to possession thereof is required.

Tests applicable to the exercise of the right to assembly

1. *Purpose Test* – Looks into the purpose of the assembly regardless of its backers (*De Jonge v. Oregon, 299 US 353, January 4, 1937*).
2. *Auspices Test* – Looks into the backers/supporters.

NOTE: The ruling in *Evangelista v. Earnshaw (G.R. No. 36453, September 28, 1932)* has not yet been abrogated where the mayor revoked permits he already granted because the group, the Communist Party of the Philippines, was found by the fiscal to be an illegal association. When the intention and effect of the act is seditious, the constitutional guaranties of freedom of speech and press and of assembly and petition must yield to punitive measures designed to maintain the prestige of constituted authority, the supremacy of the Constitution and the laws, and the existence of the State.

B.P. 880's "No permit, No Rally" policy is constitutional

B.P. 880 is constitutional. It does not curtail or unduly restrict the freedom. It merely regulates the use of public places as to the time, place, and manner of assemblies. Far from being insidious, "maximum tolerance" is for the benefit of the rallyists, not the government. The delegation to the mayors of the power to issue rally "permits" is valid because it is subject to the constitutionally sound "clear and present danger" standard (*Bayan Karapatan v. Ermita, G.R. No. 169838, April 25, 2006*).

The policy of Calibrated Preemptive Response (CPR) is void on its face

The Calibrated Preemptive Response Policy is the responsible and judicious use of means allowed by existing laws and ordinances to protect public interest and public order. In view of the maximum tolerance policy mandated by B.P. 880, CPR serves no valid purpose if it means the same thing as maximum tolerance, and is illegal if it means something else. Accordingly, what is to be followed is and should be that mandated by law itself, namely, maximum tolerance, which specifically means "the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in



dispersal of the same (*Bayan Karapatan v. Ermita*, *ibid*).

The outright modification of a permit to rally without informing the applicants is invalid

In modifying the permit outright, Mayor Soriano gravely abused his discretion when he did not immediately inform the IBP who should have been heard first on the matter of perceived imminent and grave danger of a substantive evil that may warrant the changing of the venue. Mayor Soriano failed to indicate how he had arrived at modifying the terms of the permit against the standard of clear and present danger which is an indispensable condition to such modification (*IBP v. Atienza*, G.R. No. 175241, February 24, 2010).

Q: Employees of the Davao City Water District (DCWD) sported t-shirts with inscriptions "CNA Incentive Ihatag Na, Dir. Braganza Pahawa Na!" at the beginning of the Fun Run during the DCWD's anniversary celebration. These employees have likewise been staging pickets in front of the DCWD Office during their lunch breaks to air their grievances about the non-payment of their Collective Negotiation Agreement (CNA) incentives and their opposition to DCWD's privatization. Consequently, their General Manager sent them a Memo requiring them to explain the reasons for the attire they wore during the anniversary celebration/fun run. The employees countered that the inscriptions were but manifestations of their constitutional rights of free speech and freedom of expression. Are the employees' contention correct?

A: YES. It is clear that the collective activity of joining the fun run in t-shirts with inscriptions on CNA incentives was not to effect work stoppage or disrupt the service. As pointed out by the respondents, they followed the advice of GM Gamboa "to be there" at the fun run. Respondents joined, and did not disrupt the fun run. They were in sports attire that they were allowed, nay required, to wear. Else, government employees would be deprived of their constitutional right to freedom of expression. This, then, being the fact, we have to rule against the findings of both the CSC and Court of Appeals that the wearing of t-shirts with grievance inscriptions constitutes as a violation of Reasonable Office Rules and Regulations (*Davao City Water District v. Aranjuez*, G.R. No. 194192, June 16, 2015).

FREEDOM OF RELIGION

Religion

A profession of faith to an active power that binds and elevates man to his creator (*Aglipay v. Ruiz*, G.R. No. L-45459, March 13, 1937).

Guarantees contained in Sec. 5 Art. III of the 1987 Constitution (1996, 1997, 1998, 2003, 2009, 2012 Bar)

1. Non-establishment clause; and
2. Free exercise clause.

NON-ESTABLISHMENT CLAUSE

Art. III, Sec. 5 states that "*No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.*"

NOTE: The non-establishment clause means that the state should adopt a "position of neutrality" when it comes to religious matters. (*Political Law Reviewer, Suarez*, p. 252 citing *CJ Fernando*, 2011) The non-establishment clause bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. When it forms part of our laws, rules, and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose (*Perfecto v. Judge Esidera*, A.M. No. RTJ-15-2417, July 22, 2015).

Purpose of the non-establishment clause

1. Protects voluntarism; and
2. Insulation of political process from interfaith dissension.

NOTE: Voluntarism, as a social value, means that the growth of a religious sect as a social force must come from the voluntary support of its members because of the belief that both spiritual and secular society will benefit if religions are allowed to compete on their own intrinsic merit without benefit of official patronage. Such voluntarism cannot be achieved unless the political process is insulated from religion and unless religion is insulated from politics. Non-establishment assures such insulation and thereby prevents interfaith dissension (*Bernas, S.J.*, 2011).

Accommodation

In order to give life to the constitutional right of freedom of religion, the State adopts a policy of accommodation. *Accommodation* is a recognition of



the reality that some governmental measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment (*Re: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City, A.M. No. 10-4-19-SC, March 7, 2017*).

Examples of governmental accommodation

1. In *Victoriano v. Elizalde Rope Workers Union*, the Court upheld the exemption of members of *Iglesiani Cristo* from the coverage of a closed shop agreement between their employer and a union, because it would violate the teaching of their church not to affiliate with a labor organization.

2. In *Ebralinag v. Division Superintendent of Schools of Cebu*, the petitioners, who were members of the *Jehovah's Witnesses*, refused to salute the flag, sing the national anthem, and recite the patriotic pledge for it is their belief that those were acts of worship or religious devotion, which they could not conscientiously give to anyone or anything except God. The Court accommodated them and granted them an exemption from observing the flag ceremony out of respect for their religious beliefs.

3. In *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours)*, the Court recognized that the observance of Ramadan as integral to the Islamic faith and allowed *Muslim* employees in the Judiciary to hold flexible office hours from 7:30 o'clock in the morning to 3:30 o'clock in the afternoon without any break during the period.

4. The Revised Administrative Code of 1987 has declared Maundy Thursday, Good Friday, and Christmas Day as regular holidays. Republic Act (R.A.) No. 9177 proclaimed the FIRST Day of *Shawwal*, the tenth month of the Islamic Calendar, a national holiday for the observance of *EidulFitr* (the end of Ramadan). R.A. No. 9849 declared the tenth day of *Zhu/ Hija*, the twelfth month of the Islamic Calendar, a national holiday for the observance of *EidulAdha*. Presidential Decree (P.D.) No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, expressly allows a Filipino Muslim to have more than one (1) wife and exempts him from the crime of bigamy punishable under Revised Penal Code (RPC). The same Code allows Muslims to have divorce.

Differences between establishment and accommodation

Establishment entails a positive action on the part of the State. Accommodation, on the other hand, is passive. In the former, the State becomes involved through the use of government resources with the primary intention of setting up a state religion. In the latter, the State, without being entangled, merely gives consideration to its citizens who want to freely exercise their religion (*Re: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City, A.M. No. 10-4-19-SC, March 7, 2017*).

Constitutionally created exceptions to the non-establishment clause

1. Art. 6, Sec. 29 (prohibition on appropriation of public money or property for the use, benefit or support of any religion);
2. Art. 6, Sec. 28(3) (exemption from taxation of properties actually, directly and exclusively used for religious purposes);
3. Art. 14, Sect. 3(3) (optional religious instruction in public elementary and high schools);

NOTE: Religious instruction in public schools:

- a. At the option of parents/guardians expressed in writing;
 - b. Within the regular class hours by instructors designated or approved by religious authorities of the religion to which the children belong; and
 - c. Without additional costs to the government
4. Art. 14, Sec. 4 (2) (citizenship requirement of ownership of educational institutions, except those established by religious groups and mission boards); and
 5. Art. 6, Sec. 29 (2) (appropriation allowed where ecclesiastic is employed in armed forces, in a penal institution, or in a government-owned orphanage or leprosarium).

Exceptions to the non-establishment clause as held by jurisprudence

1. Government sponsorship of town fiestas, some purely religious traditions have now been considered as having acquired



secular character; (*Garces v. Estenzo, G.R. No. L-53487, May 25, 1981*)

2. Postage stamps depicting Philippines as the venue of a significant religious event – benefit to the religious sect involved was merely incidental as the promotion of Philippines as a tourist destination was the primary objective; and (*Aglipay v. Ruiz, G.R. No. L-45459 March 13, 1937*)
3. Exemption from zoning requirements to accommodate unique architectural features of religious buildings i.e. Mormon's tall pointed steeple (*Martin v. Corporation of the Presiding Bishop, 434 Mass. 141, May 16, 2001*).

ACTS PERMITTED AND NOT PERMITTED BY THE CLAUSE

The non-establishment clause states that the State cannot:

1. Set up a church;
2. Pass laws which aid one or all religions or prefer one over another;
3. Influence a person to go to or stay away from church against his will; and
4. Force him to profess a belief or disbelief in any religion.

Constitutional provisions which express the non-establishment clause

1. *Art. VI, Sec. 29* "No public money/property given to religious sect or minister/religious personnel" (except for those assigned to army, penal institution, government orphanage and leprosarium)

NOTE: What is prohibited is the use of public money or property for the sole purpose of benefiting or supporting any church. The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church.

It has also been held that the aforementioned constitutional provision "does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general" (*Re: Letter of Tony Q. Valenciano, Holding of Religious Rituals at the Hall of Justice Building in Quezon City, A.M. No. 10-4-19-SC, March 7, 2017*).

2. *Art. II, Sec. 6* "Separation of church and state is inviolable."

3. *Art. IX(C), Sec. 2(5)* "No religious sects can be registered as political parties."

TEST

Lemon test

A test to determine whether an act of the government violates the non-establishment clause.

To pass the Lemon test, a government act or policy must:

1. Have a secular purpose;
2. Not promote or favor any set of religious beliefs or religion generally; and
3. Not get the government too closely involved ("entangled") with religion (*Lemon v. Kurtzman, 403 U.S. 602, June 28, 1971*).

FREE EXERCISE CLAUSE

The Free Exercise Clause affords absolute protection to individual religious convictions. However, the government is able to regulate the times, places, and manner of its exercise (*Cantwell v. Connecticut, 310 U.S. 296, May 20, 1940*).

Aspects of freedom and enjoyment of religious profession and worship

1. *Right to believe*, which is **absolute**; and

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul – in fact, cherish any religious conviction as he and he alone sees fit.

However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. "Men may believe what they cannot prove." Everyone has a right to his beliefs and he may not be called to account because he cannot prove what he believes (*Iglesiani Cristo v. CA, G.R. No. 119673, July 26, 1996*).

2. *Right to act on one's belief*, which is **subject to regulation**.



Where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all the other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others.

The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

The constitutional provision on religious freedom terminated disabilities, it did not create new privileges. It gave religious liberty, not civil immunity. *Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.*

Accordingly, while one has full freedom to believe in Satan, he may not offer the object of his piety a human sacrifice, as this would be murder. Those who literally interpret the Biblical command to "go forth and multiply" are nevertheless not allowed to contract plural marriages in violation of the laws against bigamy. A person cannot refuse to pay taxes on the ground that it would be against his religious tenets to recognize any authority except that of God alone. An atheist cannot express in his disbelief in act of derision that wound the feelings of the faithful. The police power can validly asserted against the Indian practice of the *suttee*, born of deep religious conviction, that calls on the widow to immolate herself at the funeral pile of her husband (*Ibid.*).

Q: The petitioners Diocese of Bacolod et al. posted 2 tarpaulins within a private compound housing the San Sebastian Cathedral of Bacolod. One tarp contained the message "Ibasura RH Law" while the other tarp contained the words "Team Buhay" and "Team Patay," classifying the electoral candidates according to their vote on the adoption of the RH Law. The COMELEC issued an order and letter ordering the immediate removal of the tarpaulin, otherwise it will be constrained to file an election offense against the petitioners. Petitioners contend that the order to remove the tarps constitutes an infringement on freedom of speech and violates the separation of church and state.

- a. Did the order violate the separation of church and state?
- b. Did the order violate petitioner's rights to freedom of expression?

A:

a. **NO.** The tarpaulin and its message are not religious speech. Art. III, Sec. 5 of the Constitution has two aspects: first, the non-establishment clause; second, the free exercise and enjoyment of religious profession and worship. The second aspect is the issue in this case. Clearly, not all acts done by those who are priests, bishops, ustadz, imams, or any other religious make such act immune from any secular regulation. The religious also have a secular existence. They exist within a society that is regulated by law.

The Bishop of Bacolod caused the posting of the tarpaulin. But not all acts of a bishop amounts to religious expression. This notwithstanding petitioners' claim that "the views and position of the petitioners, the Bishop and the Diocese of Bacolod, on the RH Bill is inextricably connected to its Catholic dogma, faith, and moral teachings." The tarpaulin, on its face, "does not convey any religious doctrine of the Catholic church." That the position of the Catholic church appears to coincide with the message of the tarpaulin regarding the RH Law does not, by itself, bring the expression within the ambit of religious speech. On the contrary, the tarpaulin clearly refers to candidates classified under "Team Patay" and "Team Buhay" according to their respective votes on the RH Law.

b. **YES.** The COMELEC is incorrect in assuming that the tarps are election propaganda. While the tarpaulin may influence the success or failure of the named candidates and political parties, this does not necessarily mean it is election propaganda. The tarpaulin was not paid for or posted "in return for consideration" by any candidate, political party, or party-list group.

COMELEC had no legal basis to regulate expressions made by private citizens. COMELEC cites the Constitution, laws, and jurisprudence to support their position that they had the power to regulate the tarpaulin. However, all of these provisions pertain to candidates and political parties. Petitioners are not candidates. Neither do they belong to any political party. COMELEC does not have the authority to regulate the enjoyment of the preferred right to freedom of expression exercised by a non-candidate in this case.

Every citizen's expression with political consequences enjoys a high degree of protection. We have also ruled that the preferred freedom of expression calls all the more for the utmost respect



BILL OF RIGHTS

when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage. Speech with political consequences is at the core of the freedom of expression and must be protected by this court (*Diocese of Bacolod v. COMELEC, G.R. No. 205728, January 21, 2015*).

TESTS

Benevolent Neutrality Approach

Benevolent neutrality is an approach that looks further than the secular purposes of government action and examines the effect of these actions on religious exercise. Benevolent neutrality recognizes the religious nature of the Filipino people and the elevating influence of religion in society; at the same time, it acknowledges that government must pursue its secular goals. In pursuing these goals, however, government might adopt laws or actions of general applicability which inadvertently burden religious exercise. Benevolent neutrality gives room for accommodation of these religious exercises as required by the Free Exercise Clause. It allows these breaches in the wall of separation to uphold religious liberty, which after all is the integral purpose of the religion clauses (*Estrada v. Escritor, A.M. No. P-02-1651, August 4, 2003*).

CLEAR AND PRESENT DANGER TEST

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent (*Schenck v. United States, 249 U.S. 47, March 3, 1919*).

NOTE: The test can be applied with regard to the Freedom of Religion when what is involved is religious speech as this is often used in cases of freedom of expression.

COMPELLING STATE INTEREST TEST (2013 Bar)

Used to determine if the interests of the State are compelling enough to justify infringement of religious freedom. It involves a three-step process:

1. *Has the statute or government action created a burden on the free exercise of religion?* – Courts often look into the sincerity of the religious belief, but without inquiring into the truth of the belief since the free exercise clause prohibits inquiring about its truth;

2. *Is there a sufficiently compelling state interest to justify this infringement of religious liberty?* – In this step, the government has to establish that its purposes are legitimate for the State and that they are compelling; and
3. *Has the State in achieving its legitimate purposes used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the State?* – The analysis requires the State to show that the means in which it is achieving its legitimate State objective is the least intrusive means, or it has chosen a way to achieve its legitimate State end that imposes as little as possible intrusion on religious beliefs.

NOTE: The Compelling State Interest test is used in cases involving purely conduct based on religious belief.

CONSCIENTIOUS OBJECTOR TEST

Conscientious objector

An "individual who has claimed the right to refuse to perform military service on the grounds of freedom of thought, conscience, and/or religion (*International Covenant on Civil and Political Rights, Art. 18*).

Requisites for one to be considered a conscientious objector

1. The person is opposed to war in any form;
2. He must show that this opposition is based upon **religious training and belief**; and
3. And he must show that this objection is **sincere** (*Clay v. United States, 403 U.S.698, June 28, 1971*).

Q: Angel, a court interpreter, is living with a man not her husband. Ben filed an administrative case against Angel as he believes that she is committing an immoral act that tarnishes the image of the court, thus she should not be allowed to remain employed therein as it might appear that the court condones her act. Angel admitted that she has been living with a man without the benefit of marriage for twenty years and that they have a son. But as a member of the religious sect known as the Jehovah's Witnesses, the Watch Tower and Bible Tract Society, their conjugal arrangement is in conformity with their religious beliefs. In fact, after ten years of living



together, she executed on July 28, 1991 a "Declaration of Pledging Faithfulness." Should Angel's right to religious freedom carve out an exception from the prevailing jurisprudence on illicit relations for which government employees are held administratively liable?

A: YES. Angel's conjugal arrangement cannot be penalized as she has made out a case for exemption from the law based on her fundamental right to freedom of religion. The Court recognizes that the State's interests must be upheld in order that freedom – including religious freedom – may be enjoyed. In the area of religious exercise as a preferred freedom, however, man stands accountable to an authority higher than the State, and so the State interest sought to be upheld must be so compelling that its violation will erode the very fabric of the State that will also protect the freedom. In the absence of showing that such State interest exists, man must be allowed to subscribe to the Infinite. Furthermore, our Constitution adheres to the Benevolent Neutrality approach that gives room for accommodation of religious exercises as required by the Free Exercise Clause. The benevolent neutrality doctrine allows accommodation of morality based on religion, provided it does not offend compelling state interests (*Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006).

Q: *Ang Ladlad* is an organization composed of men and women who identify themselves as lesbians, gays, bisexuals, or transgendered individuals (LGBTs). *Ang Ladlad* applied for registration with the COMELEC to participate in the party-list elections. The COMELEC dismissed the petition on moral grounds, stating that definition of sexual orientation of the LGBT sector makes it crystal clear that petitioner tolerates immorality which offends religious beliefs based on the Bible and the Koran. *Ang Ladlad* argued that the denial of registration, insofar as it justified the exclusion by using religious dogma, violated the constitutional guarantees against the establishment of religion. Is this argument correct?

A: YES. It was a grave violation of the non-establishment clause for the COMELEC to utilize the Bible and the Koran to justify the exclusion of *Ang Ladlad*. Our Constitution provides in Art. III, Sec. 5 that "no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." At bottom, what our non-establishment clause calls for is government neutrality in religious matters. Clearly, governmental reliance on religious justification is inconsistent with this policy of neutrality (*Ang Ladlad v. COMELEC*, G.R. No. 190582, April 8, 2010).

NOTE: When the law speaks of immoral or, necessarily, disgraceful conduct, it pertains to public and secular morality; it refers to those conducts which are proscribed because they are detrimental to conditions upon which depend the existence and progress of human society (*Leus v. St. Scholastica's College Westgrove*, G.R. No. 187226, January 28, 2015).

The government must act for secular purposes and in ways that have primarily secular effects. That is, the government proscribes this conduct because it is "detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society" and not because the conduct is proscribed by the beliefs of one religion or the other (*Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006).

Q: The petitioners, led by Leanne, members of the Philippine Independent Church, clamored for the transfer of Fr. Bart to another parish but Bishop Steven denied their request. The problem was compounded when Bishop Steven told Leanne not to push through with his plan to organize an open mass to be celebrated by Fr. Garry during the town fiesta of Socorro. Bishop Steven failed to stop Leanne from proceeding with her plan. Leanne and her sympathizers proceeded with their plan. Subsequently, Bishop Steven declared petitioners expelled/excommunicated from the Philippine Independent Church. Petitioners filed a complaint for damages with preliminary Injunction against Bishop Steven. Is it within the jurisdiction of the courts to hear the case involving the expulsion/excommunication of members of a religious institution?

A: NO. The church and the state are separate and distinct from each other. Said matter involving the expulsion/excommunication of members of the Philippine Independent Church should be left to the discretion of the officials of said religious institution in line with the doctrine that the court should not interfere on doctrinal and disciplinary differences (*Dominador Taruc v. Bishop Dela Cruz*, G.R. No. 044801, March 10, 2005).

Q: Dychie, Rose Anne, Julie, Kimmy, Alarice and Krizelle were minor school children and member of the sect, Jehovah's Witnesses. They were expelled from their classes by various public school authorities for refusing to salute the flag, sing the national anthem and recite the "*Panatang Makabayan*" required by R.A. 1265. According to them, the basic assumption in their universal refusal to salute the flags of the countries in which they are found is that such a salute constitutes an act of religious devotion



forbidden by God's law and that their freedom of religion is grossly violated. On the other hand, the public authorities claimed that the freedom of religious belief guaranteed by the Constitution does not mean exception from non-discriminatory laws like the saluting of flag and the singing of the national anthem. To allow otherwise would disrupt school discipline and demoralize the teachings of civic consciousness and duties of citizenship. Is the expulsion justified?

A: NO. Religious freedom is a fundamental right of highest priority. The two-fold aspect of right to religious worship is: 1.) Freedom to believe which is an absolute act within the realm of thought. 2.) Freedom to act on one's belief regulated and translated to external acts. The only limitation to religious freedom is the existence of grave and present danger to public safety, morals, health and interests where State has right to prevent. The expulsion of the petitioners from the school is not justified.

In the case at bar, the students expelled are only standing quietly during ceremonies. By observing the ceremonies quietly, it doesn't present any danger so evil and imminent to justify their expulsion. The expulsion of the students by reason of their religious beliefs is also a violation of a citizen's right to free education. The non-observance of the flag ceremony does not totally constitute ignorance of patriotism and civic consciousness. Love for country and admiration for national heroes, civic consciousness, and form of government are part of the school curricula. Therefore, expulsion due to religious beliefs is unjustified (*Ebralinag v. Division Superintendent of Cebu, G.R.No. 95770, March 1, 1993*).

LIBERTY OF ABODE AND FREEDOM OF MOVEMENT

Rights guaranteed under Sec. 6 of the Bill of Rights (1991, 1996, 1998, 2012 Bar)

1. Freedom to choose and change one's place of abode; and
2. Freedom to travel within the country and outside.

Liberty of abode

It is the right of a person to have his home or to maintain or change his home, dwelling, residence or habitation in whatever place he has chosen, within the limits prescribed by law.

LIMITATIONS

The liberty of abode may be impaired only:

- a. Upon lawful order of the court and; and
- b. Within the limits prescribed by law.

Examples:

1. Persons in the danger zone areas (*e.g.* Mt. Pinatubo, Taal Volcano) may be relocated to safer areas and evacuation centers in case of danger and emergency to save lives and property.
2. Insane persons who roam around in Roxas Boulevard may be committed by the government to the National Mental Hospital for appropriate treatment and medical attention.

NOTE: Under Art. III, Sec. 6, of the Constitution, a lawful order of the court is required before the liberty of abode and of changing the same can be impaired.

RIGHT TO TRAVEL

This refers to the right of a person to go where he pleases without interference from anyone.

The limitations on the right to travel

- a. Interest of national security;
- b. Public safety; and
- c. Public health.

NOTE: With respect to the right to travel, it is settled that only a court may issue a hold departure order against an individual addressed to the Bureau of Immigration and Deportation. However, administrative authorities, such as passport-officers, may likewise curtail such right in the interest of national security, public safety, or public health, as may be provided by law.

DPWH may validly ban certain vehicles on expressways in consideration of constitutional provisions of right to travel.

The right to travel does not mean the right to choose any vehicle in traversing a toll way. The right to travel refers to the right to move from one place to another. Travelers can traverse the toll way any time they choose using private or public four-wheeled vehicles. Petitioners are not denied the right to move from Point A to Point B along the toll way. Anyone is free to access the toll way, much as



the rest of the public can. The mode by which one wishes to travel pertains to the manner of using the toll way, a subject that can be validly limited by regulation (*Mirasol v. DPWH, G.R. No. 158793, June 8, 2006*).

Q: PASEI is engaged in the recruitment of Filipino workers, male and female, for overseas employment. It challenged the validity of Department Order 1 of the Department of Labor and Employment (DOLE) because it suspends the deployment of female domestic and household workers in Iraq, Jordan and Qatar due to growing incidence of physical and personal abuses to female overseas workers. PASEI contends that it impairs the constitutional right to travel. Is the contention correct?

A: NO. The deployment ban does not impair the right to travel. The right to travel is subject, among other things, to the requirements of "public safety," "as may be provided by law." Department Order No. 1 is a valid implementation of the Labor Code, in particular, its basic policy to "afford protection to labor," pursuant to the Department of Labor's rule-making authority vested in it by the Labor Code. The petitioner assumes that it is unreasonable simply because of its impact on the right to travel, but as we have stated, the right itself is not absolute. The disputed Order is a valid qualification thereto (*Philippine Association of Service Exporters, Inc. v. Drilon, G.R. No. 81958, June 30, 1988*).

A member of the military cannot travel freely to other places apart from his command post

Mobility of travel is another necessary restriction on members of the military. A soldier cannot leave his/her post without the consent of the commanding officer. The reasons are self-evident. The commanding officer has to be aware at all times of the location of the troops under command, so as to be able to appropriately respond to any exigencies. For the same reason, commanding officers have to be able to restrict the movement or travel of their soldiers, if in their judgment, their presence at place of call of duty is necessary. At times, this may lead to unsentimental, painful consequences, such as a soldier being denied permission to witness the birth of his first-born, or to attend the funeral of a parent. Yet again, military life calls for considerable personal sacrifices during the period of conscription, wherein the higher duty is not to self but to country (*Gudani v. Senga, G.R. No. 170165, August 15, 2006*).

WATCH-LIST AND HOLD DEPARTURE ORDERS

Q: Several criminal complaints were filed against former President Gloria Macapagal Arroyo

(GMA) before the DOJ. In view thereof, DOJ Sec. De Lima issued Watchlist Orders (WLO) pursuant to her authority under DOJ Circular No. 41 which was issued pursuant to the rule-making powers of the DOJ in order to keep individuals under preliminary investigation within the jurisdiction of the Philippines. Subsequently, GMA requested for the issuance of Allow Departure Orders (ADO) so that she may be able to seek medical attention abroad. Before the resolution of her application for ADO, GMA filed a petition with prayer for the issuance of a TRO seeking to annul and set aside DOJ Circular No. 41 and WLOs issued against her for being unconstitutional. A TRO was issued but GMA was prevented from leaving the country. Is DOJ Circular No. 41 unconstitutional for being a violation of the right to travel?

A: YES. The DOJ has no authority to issue DOJ Circular No. 41 which effectively restricts the right to travel through the issuance of WLOs and HDOs (Hold Departure Orders). There are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. Further, there must be an explicit provision of statutory law or Rules of Court providing for the impairment.

DOJ Circular No. 41 is not a law. It is not a legislative enactment, but a mere administrative issuance designed to carry out the provisions of an enabling law. DOJ is not authorized to issue WLOs and HDOs to restrict the constitutional right to travel. There is no mention of the exigencies stated in the Constitution that will justify the impairment. The provision simply grants the DOJ the power to investigate the commission of crimes and prosecute offenders. It does not carry the power to indiscriminately devise all means it deems proper in performing its functions without regard to constitutionally-protected rights.

DOJ cannot justify the restraint in the liberty of movement imposed by the circular on the ground that it is necessary to ensure presence and attendance in the preliminary investigation of the complaints. There is no authority of law granting it the power to compel the attendance of the subjects of a preliminary investigation pursuant to its investigatory powers. Its investigatory power is simply inquisitorial and, unfortunately, not broad enough to embrace the imposition of restraint on the liberty of movement (*Genuino v. De Lima, G.R. No. 197930, April 17, 2018*).

RETURN TO ONE'S COUNTRY

Q: Ferdinand Marcos, in his deathbed, has signified his desire to return to the Philippines



to die. But President Corazon Aquino barred the return of Marcos and his family. The Marcoses invoke their right to return. Is the right to return a constitutionally protected right?

A: NO. The right to return to one's country is not among the rights specifically guaranteed in the Bill of Rights, which treats only of the liberty of abode and the right to travel. Nevertheless, the right to return may be considered as a generally accepted principle of International law, and under the Constitution, is part of the law of the land. However, it is distinct and separate from the right to travel and enjoys a different protection under the International Covenant of Civil and Political Rights (*Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989 & October 27, 1989).

RIGHT TO INFORMATION

Rationale

The purpose is to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy (*IDEALS v. PSALM*, G.R. No. 192088, October 9, 2012).

Three categories of information:

1. Official records;
2. Documents and papers pertaining to official acts, transactions and decisions; and
3. Government research data used in formulating policies (*Article 3, Section 7, 1987 Constitution*).

NOTE: The right only affords access to records, documents and papers, which means the opportunity to inspect and copy them at his expense. The exercise is also subject to reasonable regulations to protect the integrity of public records and to minimize disruption of government operations.

Electoral Debates

Q: The online news agency Rappler, Inc. sued COMELEC Chair Bautista for breach of contract (MOA) in disallowing the former to stream online the coverage of the 2016 presidential and vice-presidential debates. Does Rappler, Inc. have a cause of action against Chair Bautista?

A: YES. Aside from the fact that Chair Bautista clearly breached an express stipulation of the MOA allowing Rappler, Inc. to stream online the coverage of the debates, the presidential and vice-presidential debates are held primarily for the benefit of the electorate to assist the electorate in making informed choices on election day. Through the conduct of the national debates among presidential and vice-presidential candidates, the electorate will have the "opportunity to be informed of the candidates' qualifications and track record, platforms and programs, and their answers to significant issues of national concern." The political nature of the national debates and the public's interest in the wide availability of the information for the voters' education certainly justify allowing the debates to be shown or streamed in other websites for wider dissemination (*Rappler, Inc. v. Bautista*, G.R. No. 222702, April 5, 2016).

LIMITATIONS

GR: The access must be for a lawful purpose and is subject to reasonable conditions by the custodian of the records.

XPNS:

The right does not extend to the following:

1. Information affecting national security, military and diplomatic secrets. It also includes inter-government exchanges prior to consultation of treaties and executive agreement as may reasonably protect the national interest; (**2009 Bar**)
2. Matters relating to investigation, apprehension, and detention of criminals which the court may not inquire into prior to arrest, prosecution and detention;
3. Trade and industrial secrets and other banking transactions as protected by the Intellectual Property Code and the Secrecy of Bank Deposits Act; and
4. Other confidential information falling under the scope of the Ethical Safety Act concerning classified information (*Chavez v. PCGG*, G.R. No. 130716, December 9, 1998).

Q: Adolfo, filed in his capacity as a citizen and as a stakeholder in the industry involved in importing petrochemicals, filed a mandamus petition to compel the Committee on Tariff and Related Matters (CTRM) to provide him a copy of the minutes of its May 23, 2005 meeting; as well



as to provide copies of all official records, documents, papers and government research data used as basis for the issuance of Executive Order No. 486 which lifted the suspension of the tariff reduction schedule on petrochemicals. Wilfredo based his action on the constitutional right to information on matters of public concern and the State's policy of full public disclosure. Will the petition prosper?

A: NO. The constitutional guarantee to information does not open every door to any and all information but is rather confined to matters of public concern. It is subject to such limitations as may be provided by law. The State's policy of full public disclosure is restricted to transactions involving public interest and is tempered by reasonable conditions prescribed by law. Two requisites must concur before the right to information may be compelled by writ of mandamus. Firstly, the information sought must be in relation to matters of public concern or public interest. And, secondly, it must not be exempt by law from the operation of the constitutional guarantee. In this case, the information sought by Wilfredo are classified as a closed-door Cabinet meeting by virtue of the CTRM's composition and the nature of its mandate dealing with matters of foreign affairs, trade and policy-making. It is always necessary, given the highly important and complex powers to fix tariff rates vested in the President, that the recommendations submitted for the President's consideration be well-thought out and well-deliberated. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. Without doubt, therefore, ensuring and promoting the free exchange of ideas among the members of CTRM tasked to give tariff recommendations to the President were truly imperative (*Sereno v. Committee on Tariff and Related Matters of the NEDA*, G.R. No. 175210, February 1, 2016).

PUBLICATION OF LAWS AND REGULATIONS

Rationale for Publication of Laws

There is a need for publication of laws to reinforce the right to information. In *Tañada v. Tuvera*, the Court said that Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people.

Publication of regulations

Publication is necessary to apprise the public of the contents of penal regulations and make the said penalties binding on the persons affected thereby (*Pesigan v. Angeles*, G.R. No. L-6427, April 30, 1984).

Publication is required in the following:

1. All statutes, including those of local application, and private laws;
2. President decrees and executive orders promulgated by the President;
3. Administrative rules and regulations if their purpose is to enforce and implement existing law; and
4. Memorandum Circulars, if they are meant merely to interpret but to "fill in the details" which that body is supposed to enforce.

Publication is NOT required in the following:

1. Interpretative regulations and those merely internal in nature, regulating only the personnel of the administrative agency; and
2. Letters of instructions issued by administrative superiors concerning rules and guidelines

ACCESS TO COURT RECORDS

Q: During the pendency of the intestate proceedings, Nigel, a creditor of the deceased, filed a motion with a prayer that an order be issued requiring the Branch Clerk of Court to furnish him with copies of all processes and orders and to require the administrator to serve him copies of all pleadings in the proceedings. The judge denied the motion because the law does not give a blanket authority to any person to have access to official records and documents and papers pertaining to official acts. The judge said that his interest is more of personal than of public concern. Is the judge correct?

A: NO. The right to information on matters of public concern is a constitutional right. However, such is not absolute. Under the Constitution, access is subject to limitations as may be provided by law. Therefore, a law may exempt certain types of information from public scrutiny such as national security. The privilege against disclosure is recognized with respect to state secrets bearing on the military, diplomatic and similar matters. Since intestate proceedings do not contain any military or diplomatic secrets which will be disclosed by its production, it is an error on the part of the judge to deny Nigel's motion (*Hidalgo v. Reyes*, A.M. No. RTJ-05-1910, April 15, 2005).

RIGHT TO INFORMATION



RELATIVE TO:

GOVERNMENT CONTRACT NEGOTIATIONS

The constitutional right to information includes official information on *on-going negotiations* before a final contract. Information, however, on *on-going evaluation or review* of bids or proposals being undertaken by the bidding or review committee is not immediately accessible under the right to information. While the evaluation or review is still on-going, there are no "official acts, transactions, or decisions" on the bids or proposals.

However, once the committee makes its *official recommendation*, there arises a "*definite proposition*" on the part of the government. From this moment, the public's right to information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition (*Chavez v. PEA*, G.R. No. 133250, July 9, 2002).

Parties to a government contract cannot stipulate that the terms thereof should be considered confidential and should be open for examination by the public (*AKBAYAN v. Aquino*, G.R. No. 170516, July 16, 2008).

The right to information does not extend to matters recognized as "privileged information" under the separation of powers, by which the Court mean Presidential conversations, correspondence, and discussions in closed-door meetings (*Neri v. Senate*, G.R. No. 180643, September 4, 2008).

Q: PSALM commenced the privatization of Angat Hydro-Electric Power Plant. Korea Water Resources Corporation won in the public bidding. IDEALS then requested for detailed information regarding the winning bidder, such as company profile, contact person or responsible officer, office address and Philippine registration but PSALM refused to give such information. May IDEALS compel PSALM to furnish them those pieces of information invoking their right to information?

A: YES. The Court distinguished the *duty to disclose information* from the *duty to permit access to information* on matters of public concern under Sec. 7, Art. III of the Constitution. Unlike the disclosure of information which is mandatory under the Constitution, the other aspect of the people's right to know requires a demand or request for one to gain access to documents and paper of the particular agency. Moreover, the duty to disclose covers only

transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency. Such relief must be granted to the party requesting access to official records, documents and papers relating to official acts, transactions, and decisions that are relevant to a government contract (*IDEALS v. PSALM*, G.R. No. 192088, October 9, 2012).

Q: The National Housing Authority entered into a Joint Venture Agreement with R-II B Inc., to develop a housing facility in the Smokey Mountain dumpsite and reclamation area. Frank Chavez filed a case before the Supreme Court contending that the parties must be compelled to disclose all information related to the project. Is NHA compelled to disclose such information?

A: Art. II compels the State and its agencies to disclose all of its transaction involving public interest. Thus, the government agencies, without need of demand from anyone, must bring into public view all the steps and negotiations leading to the consummation of the transaction and the contents of the perfected contract. The right to information, however, is not absolute and is still subject to certain limitations such as privileged communication.

It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day if and when Congress decides to approve the proposed "Freedom of Access to Information Act."

In the meantime, it would suffice that government agencies post on their bulletin boards the documents incorporating the information on the steps and negotiations that produced the agreements and the agreements themselves, and if finances permit, to upload said information on their respective websites for easy access by interested parties. Without any law or regulation governing the right to disclose information, the NHA or any of the respondents cannot be faulted if they were not able to disclose information relative to the Smokey Mountain Development to the public in general (*Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007).

DIPLOMATIC NEGOTIATIONS



The privileged character of diplomatic negotiations has been recognized in this jurisdiction. In *Chavez v. PCGG*, the Court held that "information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest."

Q: Petitioners request that they be given a copy of the full text of the JPEPA as well as the offers and negotiations between the Philippines and Japan. Can these documents be disclosed as matters of public concern?

A: It depends. There is a distinction between the text of the treaty and the offers and negotiations. They may compel the government to disclose the text of the treaty but not the offers between RP and Japan, because these are negotiations of executive departments. Diplomatic Communication negotiation is privileged information (*Akbayan v. Aquino*, G.R. No. 170516, July 16, 2008).

RIGHT OF ASSOCIATION

Freedom of association (2000 Bar)

The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged (Sec. 8, Art. III, 1987 Constitution).

The right to form associations shall not be impaired without due process of law. It is therefore an aspect of the general right of liberty. More specifically, it is an aspect of freedom of contract; and insofar as associations may have for their object the advancement of beliefs and ideas, freedom of association is an aspect of freedom of expression and of belief.

NOTE: The right to form, or join, unions or associations, includes the right not to join or, if one is already a member, to disaffiliate from the association.

Interpretation of "for purposes not contrary to law"

It is the same as clear and present danger rule, only such may justify abridgement to the right to form association or society.

The government must comply with the heavy burden of showing that the organization in fact presents a clear and present danger of substantive evil which the state has the right to protect (*Bernas, The 1987 Philippine Constitution A Comprehensive Review*, 2006).

Right to Strike

The right to strike is **NOT** included in the right to form unions or freedom of assembly by government employees. Their employment is governed by law. It is the Congress and administrative agencies which dictate the terms and conditions of their employment. The same is fixed by law and circulars and thus not subject to any collective bargaining agreement.

The claim that the right to strike is part of the the freedom of expression and the right to peacefully assemble and petition the government for redress of grievances, and should thus, be recognized even in the case of government employees, was rejected by the Supreme Court (*GSIS v. Kapisanan ng mga Manggagawasa GSIS*, G.R. No. 170132, December 6, 2006).

NOTE: Pursuant to Sec. 4, Rule III of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, the terms and conditions of employment in the Government, including any of its instrumentalities, political subdivision and government owned and controlled corporations with original charters, are governed by law and employees therein shall not strike for the purpose of securing changes thereof. (*SSS Employees Association v. CA*, G.R. No. 85279, July 28, 1989) The only available remedy for them is to lobby for better terms of employment with Congress. The right to unionize is an economic and labor right while the right to association in general is a civil-political right.

The right to self-organization is not limited to unionism. Workers may also form or join an association for mutual aid and protection and for other legitimate purposes. (*Samahan ng Manggagawasa Hanjin Shipyard v. Bureau of Labor Relations*, G.R. No. 211145, October 14, 2015)

Q: Atty. Marcial refuses to pay his member dues to the Integrated Bar of the Philippines (IBP). IBP recommended his removal from the Roll of Attorneys. He now argues that his automatic membership in the IBP and mandatory payment of its dues violate his right NOT to associate. Is his contention correct?

A: NO. To compel a lawyer to be a member of the Integrated Bar is not violative of his constitutional freedom to associate. Integration does not make a



lawyer a member of any group of which he is not already a member. He became a member of the Bar when he passed the Bar examinations. All that integration actually does is to provide an official national organization for the well-defined but unorganized and incohesive group of which every lawyer is a ready a member.

Bar integration does not compel the lawyer to associate with anyone. He is free to attend or not attend the meetings of his Integrated Bar Chapter or vote or refuse to vote in its elections as he chooses. The only compulsion to which he is subjected is the payment of annual dues. The Supreme Court, in order to further the State's legitimate interest in elevating the quality of professional legal services, may require that the cost of improving the profession in this fashion be shared by the subjects and beneficiaries of the regulatory program-the lawyers.

Assuming that the questioned provision does in a sense compel a lawyer to be a member of the Integrated Bar, such compulsion is justified as an exercise of the police power of the State (*In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edilion, A.M. No. 1928, August 3, 1978*).

Integrated Bar of the Philippines

Compulsory membership of a lawyer in the Integrated Bar of the Philippines does not violate the constitutional guarantee (*Ibid.*).

EMINENT DOMAIN

(See *Eminent Domain under Fundamental Powers of the State*)

NON-IMPAIRMENT / CONTRACT CLAUSE

CONTEMPORARY APPLICATION OF THE NON-IMPAIRMENT CLAUSE

Impairment of contracts

Any law which introduces a change into the express terms of the contract, or its legal construction, or its validity, or its discharge, or the remedy for its enforcement, impairs the contract.

The law impairs the obligation of contracts if:

1. It changes the terms and conditions of a legal contract either as to the time or mode of performance; or
2. It imposes new conditions or dispenses with those expressed if it authorizes for its

satisfaction something different from that provided in its terms.

NOTE: Mere technical change which does not change the substance of the contract, and which still leaves an efficacious remedy for enforcement does NOT impair the obligation of contracts. A valid exercise of police power is superior to obligation of contracts.

Applicability of the provision

This constitutional provision is applicable only if the obligation of contract is impaired by legislative act (statute, ordinance, etc.). The act need not be by a legislative office; but it should be legislative in nature. Furthermore, the impairment must be substantial (*Philippine Rural Electric Cooperatives Assoc. v. DILG Secretary, G.R. No. 143076, June 10, 2003*).

Inapplicability of the provision

One, in case of Franchises, privileges, licenses, etc.

NOTE: These are subject to amendment, alteration or repeal by Congress when the common good so requires.

Two, there is neither public interest involved nor a law that supports the claim.

NOTE: It can only be invoked if it is against the government or when the government intervenes in contract between the parties (*Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc., G.R. No. 180893, November 25, 2009*).

NOTE: The non-impairment clause always yields to the police power of the state—and even to the power of taxation and eminent domain—for as long as the subject matter of the contract is imbued with paramount public interest. Into every contract is deemed written the police power of the State. Also, the police power may not be bargained away through the medium of a contract, or even that of a treaty.

Mutuality of contracts

GR: Valid contracts should be respected by the legislature and not tampered with by subsequent laws that will change the intention of the parties or modify their rights and obligations.

NOTE: The will of the parties to a contract must prevail. A later law which enlarges, abridges, or in any manner changes the intent of the parties to the contract necessarily impairs the contract itself and cannot be given retroactive effect without violating



the constitutional prohibition against impairment of contracts (*Sangalang v. IAC*, G.R. No. 71169, December 22, 1988).

XPN: Enactment of laws pursuant to the exercise of police power because public welfare prevails over private rights. It is deemed embedded in every contract a reservation of the State's exercise of police power, eminent domain and taxation, so long as it deals with a matter affecting the public welfare (*PNB v. Remigio*, G.R. No. 78508, March 21, 1994).

Q: While still being a GOCC, PAL entered into a Commercial Agreement and Joint Services Agreement with Kuwait Airways in 1981 establishing a joint commercial arrangement whereby PAL and Kuwait Airways were to jointly operate the Manila-Kuwait (and vice versa) route, utilizing the planes and services of Kuwait Airways. In that Agreement, PAL may collect royalties from Kuwait Airways. Subsequently, the government lost control over PAL and became a private corporation. After 14 years, delegations from the Philippine government and Kuwait government met. The talks culminated in a Confidential Memorandum of Understanding (CMU). The CMU terminates the agreement concerning the royalties effective April 12, 1995. However, PAL insists that the agreement could only be effectively terminated on 31 October 1995, or the last day of the then current traffic period and therefore the provisions of the agreement shall continue to be enforced until such date. Can the execution of the CMU between Kuwait and Philippine Governments automatically terminate the Commercial Agreement?

A: NO. An act of the Philippine Government negating the commercial agreement between the two airlines would infringe the vested rights of a private individual. Since PAL was already under private ownership at the time the CMU was entered into, the Court cannot presume that any and all commitments made by the Philippine Government are unilaterally binding on the carrier even if this comes at the expense of diplomatic embarrassment. Even granting that the police power of the State may be exercised to impair the vested rights of privately-owned airlines, the deprivation of property still requires due process of law (*Kuwait Airline Corporation v. PAL*, G.R. No. 156087, May 8, 2009).

LEGAL ASSISTANCE AND FREE ACCESS TO COURTS

Basis

Free access to courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any

person by reason of poverty (*Sec. 11, Art. 3, 1987 Constitution*). **(1991, 2002 Bar)**

Right to free access to courts

This right is the basis for *Sec. 17, Rule 5 of the New Rules of Court* allowing litigation in *forma pauperis*. Those protected include low paid employees, domestic servants and laborers (*Cabangis v. Almeda Lopez*, G.R. No. 47685, September 20, 1940).

Q: The Municipal Trial Court denied Jaypee's petition to litigate *in forma pauperis* on the ground that Jaypee has regular employment and sources of income thus cannot be classified as poor or pauper. Is the court's order justified?

A: NO. They need not be persons so poor that they must be supported at public expense. It suffices that the plaintiff is indigent. And the difference between paupers and indigent persons is that the latter are persons who have no property or sources of income sufficient for their support aside from their own labor though self-supporting when able to work and in employment (*Acar v. Rosal*, G.R. No. L-21707, March 18, 1967).

Q: The Good Shepherd Foundation, Inc. seeks to be exempted from paying legal fees for its indigent and underprivileged clients couching their claim on the free access clause embodied in Sec. 11, Art. III of the Constitution. Is the contention tenable?

A: NO. The Court cannot grant exemption of payment of legal fees to foundations/institutions working for indigent and underprivileged people. According to Sec. 19, Rule 141, *Rules of Court*, only a *natural party litigant* may be regarded as an indigent litigant that can be exempted from payment of legal fees. Exemption cannot be extended to the foundations even if they are working for the indigent and underprivileged people (*Re: Query of Mr. Roger C. Prioreschi Re: exemption from legal and filing fees of the Good Shepherd Foundation, Inc.*, A. M. No. 09-6-9-SC, August 19, 2009).

Q: A pauper is known to have several parcels of land but that for several years prior to the filing of the complaint in the inferior court said parcels of land had been divided and partitioned amongst his children who had since been in possession thereof and paying the taxes thereon. Is he considered indigent? May he apply for free legal assistance?

A. YES. Republic Act 6034 (An Act Providing Transportation and Other Allowances for Indigent Litigants), has defined the term "indigent" to refer to a person "who has no visible means of income or



whose income is insufficient for the subsistence of his family."

Even on the assumption that petitioner owns property, he may still be an indigent considering his sworn statement that he had no income. Under the standard set forth in *Acar v. Rosal* as well as the recent legislations heretofore adverted to, it is the income of a litigant that is the determinative factor. For, really, property may have no income. It may even be a financial burden (*Enaje v. Ramos*, G.R. No. L-22109, January 30, 1970).

RIGHTS OF SUSPECTS

Miranda/Custodial Investigation rights (1990, 1991, 1993, 1994, 2000, 2001, 2005, 2009, 2012 Bar)

These are the rights to which a person under custodial investigation is entitled. At this stage, the person is not yet an accused as there is yet no case filed against him. He is merely a suspect.

The following are the rights of suspects:

1. Right to remain silent; **(2013 Bar)**
2. Right to competent and independent counsel, preferably of his own choice;
3. Right to be reminded that if he cannot afford the services of counsel, he would be provided with one
4. Right to be informed of his rights;
5. Right against torture, force, violence, threat, intimidation or any other means which vitiate the free will;
6. Right against secret detention places, solitary, incommunicado, or similar forms of detention;
7. Right to have confessions or admissions obtained in violation of these rights considered inadmissible in evidence (*Miranda v Arizona*, 384 U.S. 436, June 13, 1966). **(2013 Bar)**

NOTE: Even if the person consents to answer questions without the assistance of counsel, the moment he asks for a lawyer at any point in the investigation, the interrogation must cease until an attorney is present.

The "Miranda Rights" are available to avoid involuntary extrajudicial confession.

The purpose of providing counsel to a person under custodial investigation is to curb the police-state practice of extracting a confession that leads

appellant to make self-incriminating statements (*People v. Rapeza*, G.R. No. 169431, April 3, 2007).

AVAILABILITY

1. During custodial investigation;
As soon as the investigation ceases to be a general inquiry unto an unsolved crime and direction is aimed upon a particular suspect, as when the suspect who has been taken into police custody and to whom the police would then direct interrogatory questions which tend to elicit incriminating statements; or **(2014 Bar)**
2. Critical pre-trial stage.

R.A. 7438 - An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation and the Duties of the Arresting, Detaining and Investigating Officers

This is a special penal law enacted pursuant to Section 12, par. 4, Art. III of the 1987 Constitution.

The custodial investigation shall include the practice of issuing an invitation to a person who is under investigation in connection with an offense he is suspected to have committed (*R.A. 7438, Sec. 2*).

NOTE: Rights during custodial investigation apply only against testimonial compulsion and not when the body of the accused is proposed to be examined (e.g. urine sample, photographs, measurements, garments, shoes) which is a purely mechanical act.

In the case of *Galman v. Pamaran*, G.R. Nos. 71208-09, August 30, 1985, it was held that the constitutional safeguard is applied notwithstanding that the person is not yet arrested or under detention at the time. However, Fr. Bernas has qualified this statement by saying that jurisprudence under the 1987 Constitution has consistently held, following the stricter view, that the rights begin to be available only when the person is already in custody (*People v. Ting Lan Uy*, G.R. No. 157399, November 17, 2005).

Furthermore, in the case of *People v. Reyes*, G.R. No. 178300, March 17, 2009, the court held that: "The mantle of protection afforded by the above-quoted provision covers the period from the time a person is taken into custody for the investigation of his possible participation in the commission of a crime from the time he was singled out as a suspect in the commission of the offense although not yet in custody.

Infraction of the rights of an accused during custodial investigation or the so-called Miranda Rights render inadmissible only the extrajudicial confession or admission made during such



investigation. "The admissibility of other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules, is not affected even if obtained or taken in the course of custodial investigation" (*Ho Wai Pang v. People*, G.R. No. 176229, October 19, 2011).

Unavailability of Miranda Rights

1. During a police line-up, unless admissions or confessions are being elicited from the suspect; (*Gamboa v. Cruz*, G.R. No. L-56291, June 27, 1988)
2. During administrative investigations; (*Sebastian, Jr. v Garchitorena*, G.R. No 114028, October 18, 2000)
3. Confessions made by an accused at the time he voluntarily surrendered to the police or outside the context of a formal investigation; (*People v Baloloy*, G.R. No 140740, April 12, 2002)
4. Statements made to a private person; and (*People v Tawat*, G.R. No 62871, May 25, 1985)
5. Forensic investigation is not tantamount to custodial investigation, therefore Miranda rights is not applicable (*People v. Tranca*, 235 SCRA 455, August 17, 1994).

WAIVER

Rights that may be waived

1. Right to remain silent; and
2. Right to counsel.

Rights that may not be waived

The right of the accused to be given the Miranda warnings.

Requisites for valid waiver

1. Made voluntarily, knowingly and intelligently;
2. In writing; and
3. With the presence of counsel (*People v. Galit*, G.R. No. L-51770, March 20, 1985).

Admissibility as evidence of confessions given to news reporters and/or media and videotaped confessions

Confessions given in response to a question by news reporters, not policemen, are admissible. Where the suspect gave spontaneous answers to a televised interview by several press reporters, his answers are deemed to be voluntary and are admissible.

Videotaped confessions are admissible, where it is shown that the accused unburdened his guilt willingly, openly and publicly in the presence of the newsmen. Such confessions do not form part of confessions in custodial investigations as it was not given to policemen but to media in attempt to solicit sympathy and forgiveness from the public.

However, due to inherent danger of these videotaped confessions, they must be accepted with extreme caution. They should be presumed involuntary, as there may be connivance between the police and media men (*People v. Endino*, G.R. No. 133026, February 20, 2001).

NOTE: What the Constitution bars is the compulsory disclosure of the incriminating facts or confessions. The rights under Sec. 12 are guarantees to preclude the slightest use of coercion by the State, and not to prevent the suspect from freely and voluntarily telling the truth. (*People v. Andan*, G.R. No. 116437, March 3, 1997)

Q: Constancio and Berry were charged with the crime of Rape with Homicide committed against "AAA". During the trial, Amparo, a news reporter, testified that he personally interviewed Berry. Amparo declared that during his interview, Berry revealed what happened the night "AAA" was killed. Atty. Suarez testified that during the custodial investigation he advised Berry of his constitutional rights and the consequences of his statements. Berry then executed an extrajudicial confession which was embodied in a *SinumpaangSalaysay*. However, at the trial, Berry attested that the *SinumpaangSalaysay* was false, and claimed that he was threatened into signing the same. Is the confession admissible?

A: YES. The Court believed that Berry's confession is admissible because it was voluntary executed with the assistance of a competent and independent counsel in the person of Atty. Suarez following Section 12, Article III of the Constitution. In default of proof that Atty. Suarez was negligent in his duties, the Court held that the custodial investigation of Berry was regularly conducted. there was no ample proof to show that Berry's narration of events to Amparo was the product of intimidation or coercion. Berry's extrajudicial confession to Amparo, a news reporter, is deemed voluntary and is admissible in evidence as it was not made to the police authorities or to an investigating officer (*People v. Constancio*, G.R. No. 206226, April 4, 2016).

Fruit of the Poisonous Tree Doctrine

Once the primary source (the tree) is shown to have been unlawfully obtained, any secondary or



derivative evidence (the fruit) derived from it is also inadmissible.

NOTE: The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence, because the originally illegally obtained evidence taints all evidence subsequently obtained.

Q: Kyle Kuzma is in police custody. Bothered and remorseful, he spontaneously admitted guilt and that he is the one who killed Dr. Sheldon. Is his confession admissible?

A: YES. Kyle's statement is a spontaneous statement. It was not elicited through questioning by the authorities (*People v. Cabiles, G.R. No. 112035, January 16, 1998*).

Q: Mayor Tatum arrived and proceeded to the investigation room. Upon seeing the mayor, appellant Flores approached him and whispered a request to talk privately. The mayor led appellant to the office of the Chief of Police and there, Flores broke down and said "Mayor, patawarin mo ako! I will tell you the truth. I am the one who killed Villaroman." The mayor opened the door of the room to let the public and media representatives witness the confession. The mayor first asked for a lawyer to assist appellant but since no lawyer was available she ordered the proceedings photographed and videotaped. In the presence of the mayor, the police, representatives of the media and appellant's own wife and son, appellant confessed his guilt. His confession was captured on videotape and covered by the media nationwide. Did such uncounseled confession violate the suspect's constitutional rights?

A: NO. A confession given to the mayor may be admitted in evidence if such confession by the suspect was given to the mayor as a confidant and not as a law enforcement officer. In such a case, the uncounseled confession did not violate the suspect's constitutional rights. What the constitution bars is the compulsory disclosure of incriminating facts or confessions. The rights under Sec. 12 are guarantees to preclude the slightest use of coercion by the State and not to prevent the suspect from freely and voluntarily telling the truth (*People v. Andan, G.R. No. 116437, March 3, 1997*).

Q: Accused Antonio Lauga was charged and convicted of the crime of rape of his thirteen-year old daughter, AAA. During the proceedings, Juan Paulo Nepomuceno, a *bantaybayan* in the *barangay*, testified that the accused confessed that he had in fact raped AAA. The trial court found him guilty of the crime of rape. Lauga contends that the extrajudicial confession he

made to Nepomuceno is inadmissible in evidence as it was made without assistance of counsel. Is his contention tenable?

A: YES. A *barangay bantay bayan* is considered a public officer and any extrajudicial confession made to him without the assistance of counsel is inadmissible in evidence as provided for under Sec. 12, Art. III of the Constitution (*People v. Lauga, G.R. No. 186228, March 15, 2010*).

RIGHTS OF THE ACCUSED

1. Due process;
2. Be presumed innocent;
3. Be heard by himself and counsel;
4. Be informed of the nature and cause of the accusation against him;
5. A speedy, impartial and public trial;
6. Meet the witnesses face to face;
7. Have compulsory process to secure the attendance of witnesses and production of evidence on his behalf;
8. Against double jeopardy; and
9. Bail.

CRIMINAL DUE PROCESS

No person shall be held to answer for a criminal offense without due process of law[1987 Constitution, Sec. 14(1), Art. III].

Requisites of criminal due process (NO-CPJ)

1. Accused is heard by a Court of competent jurisdiction;
2. Accused is proceeded against under the orderly Processes of law;
3. Accused is given Notice and Opportunity to be heard;
4. Judgment must be rendered after lawful hearing.

The right to appeal is neither a natural right nor part of due process. It is a mere statutory right, but once given, denial constitutes violation of due process.

RIGHT TO BAIL

(1991, 1992, 1993, 1994, 1999, 2001, 2004, 2005, 2006, 2008, 2009 Bar)

Bail

It refers to the security given for the release of a person in custody of law, furnished by him or a bondsman, conditioned upon his appearance before any court as required(Sec. 1, Rule 114, Rules of Court).



Rationale behind the right to bail

Bail is not granted to prevent the accused from committing additional crimes. The purpose of bail is to guarantee the appearance of the accused at the trial, or whenever so required by the trial court. The amount of bail should be high enough to assure the presence of the accused when so required, but it should be no higher than is reasonably calculated to fulfill this purpose. Thus, bail acts as a reconciling mechanism to accommodate both the accused's interest in his provisional liberty before or during the trial, and the society's interest in assuring the accused's presence at trial (*Enrile v. Sandiganbayan*, G.R. No. 213847, August 18, 2015).

NOTE: For purposes of admission to bail, the determination of whether or not evidence of guilt is strong in criminal cases involving capital offenses, or offenses punishable with *reclusion perpetua* or life imprisonment lies within the discretion of the trial court. But, as the Court has held in *Concerned Citizens v. Elma*, "such discretion may be exercised only after the hearing called to ascertain the degree of guilt of the accused for the purpose of whether or not he should be granted provisional liberty." It is axiomatic, therefore, that bail cannot be allowed when its grant is a matter of discretion on the part of the trial court unless there has been a hearing with notice to the Prosecution. The hearing, which may be either summary or otherwise, in the discretion of the court, should primarily determine whether or not the evidence of guilt against the accused is strong (*Enrile v. Sandiganbayan*, *Ibid.*).

Application for bail in relation to challenging the arrest

The application or admission of the accused to bail shall not bar him from challenging both the validity of his arrest or the legality of the warrant issued therefore, provided that he raises them before he enters his plea. It shall not likewise bar the accused from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him provided the same is raised before he enters his plea (*Rules of Court*, Rule 114, Sec. 26).

The following are entitled to bail:

1. Persons charged with offenses punishable by death, *reclusion perpetua* or life imprisonment, when evidence of guilt is not strong;
2. Persons convicted by the trial court pending their appeal;
3. Persons who are members of the AFP facing a court martial.

Q: Sen. Enrile, who was indicted for plunder in connection with the Pork Barrel Scam, applied

for bail arguing among others that he is not a flight risk, and that his age and physical condition must be seriously considered. May he post bail?

A: YES. Enrile's poor health justifies his admission to bail. The Court is guided by the earlier mentioned principal purpose of bail, which is to guarantee the appearance of the accused at the trial, or whenever so required by the court. The Court is further mindful of the Philippines' responsibility in the international community arising from the national commitment under the Universal Declaration of Human Rights to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be admitted to bail. This national commitment to uphold the fundamental human rights as well as value the worth and dignity of every person has authorized the grant of bail not only to those charged in criminal proceedings but also to extraditees upon a clear and convincing showing: (1) that the detainee will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian and compelling circumstances (*Enrile v. Sandiganbayan*, *Ibid.*).

Constitutional provisions connected to right to bail

- a. The suspension of the privilege of the writ of *habeas corpus* does not impair the right to bail; and
- b. Excessive bail is not required.

Instances when bail is a matter of right or of discretion

1. *Bail as a matter of right*
 - a. *Before or after* conviction by the metropolitan and municipal trial courts;
 - b. *Before* conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment; and (*Sec. 4, Rule 114*)
 - c. *Before* final conviction by all children in conflict with the law for an offense not punishable by *reclusion perpetua* or life imprisonment.
2. *Bail as a matter of discretion*
 - a. Upon conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment;
 - b. Regardless of the stage of the criminal prosecution, a person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, when *evidence of guilt is not strong*; and



- c. *A child in conflict with the law* charged with an offense punishable by death, *reclusion perpetua* or life imprisonment when *evidence of guilt is strong* (A.M. No. 02-1-18-SC, Sec. 28).

NOTE: The prosecution cannot adduce evidence for the denial of bail where it is a matter of right. However where the grant of bail is discretionary, the prosecution may show proof to deny the bail.

Grounds for denial of bail

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- a. That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- b. That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
- c. That he committed the offense while under probation, parole, or conditional pardon;
- d. That the circumstances of his case indicate the probability of flight if released on bail; or
- e. That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the RTC after notice to the adverse party in either case (*Rules of Court, Sec. 5, Rule 114*).

When available

The right to bail is available from the very moment of arrest (which may be before or after the filing of formal charges in court) up to the time of conviction by final judgment (which means after appeal). No charge need be filed formally before one can file for bail, so long as one is under arrest (*Heras Teehankee v. Rovira, G.R. No. L-101, December 20, 1945*).

Scenarios where the penalty of the person applying for bail is imprisonment exceeding six years

1. *Absence of the circumstances enumerated in 3rd par., Sec. 5 of Rule 114.* In this scenario, bail is a matter of discretion. This means that, if none of the circumstances mentioned in the third paragraph of Sec. 5, Rule 114 is present, the appellate court has the discretion to grant or deny bail. An application for bail pending appeal may be denied even if the bail-negating circumstances in the third paragraph are absent; and

NOTE: The discretionary nature of the grant of bail pending appeal does not mean that bail should automatically be granted absent any of the circumstances mentioned in the third paragraph of Sec. 5, Rule 114 of the Rules of Court (*Jose Antonio Leviste v. CA, G.R.No. 189122, March 17, 2010*).

2. *Existence of at least one of the said circumstances.* The appellate court exercises a more stringent discretion, that is, to carefully ascertain whether any of the enumerated circumstances in fact exists. If it so determines, it has no other option except to deny or revoke bail pending appeal (*Ibid.*).

In bail application, if the prosecutor interposes no objection to the accused charged with capital offense, the judge may not grant the application without court hearing

Judges are required to conduct hearings if the accused is being charged with a capital offense. Absence of objection from the prosecution is never a basis for the grant of bail in such cases, for the judge has no right to presume that the prosecutor knows what he is doing on account of familiarity with the case (*Joselito v. Narciso v. Flor Marle Sta. Romana-Cruz, G.R. No. 134504, March 17, 2000*).

NOTE: A hearing on the motion for bail must be conducted by the judge to determine whether or not the evidence of guilt is strong (*Baylon v. Judge Sison, A.M. No. 92-7-360-0, April 6, 1995*).

Whether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given the prosecutor, or at least he must be asked for his recommendation, because in fixing the amount of bail, the judge is required to take into account a number of factors (*Cortes v. Judge Catral, A.M. No. RTJ-97-1387, September 10, 1997*).

Reason why capital offenses when evidence of guilt is strong are not bailable



Due to the gravity of the offenses committed, the confinement of a person accused of said offenses insures his attendance in the court proceedings than if he is given provisional liberty on account of a bail posted by him.

Factors to be considered in setting the amount of bail

1. Financial ability of the accused to give bail;
2. Nature and circumstances of offense;
3. Penalty for offense charged;
4. Character and reputation of accused;
5. Age and health of accused;
6. Weight of evidence against the accused;
7. Probability of the accused appearing in trial;
8. Forfeiture of other bonds;
9. Fact that accused was a fugitive from justice when arrested; and
10. Pendency of cases in which the accused is under bond (*A.M. No. 12-11-2-SC, March 18, 2014*).

Q: Manolet was arrested for child abuse. She filed a petition for application of bail. The court granted her application with a condition that the approval of the bail bonds shall be made only after her arraignment. Is the court's order valid?

A: NO. The grant of bail should not be conditioned upon prior arraignment of the accused. A condition imposed by the judge that before an accused may be allowed to post bail, he must be arraigned first was declared unconstitutional because it violates two (2) important rights of the accused:

1. The right not to be put on trial except upon a valid complaint or information sufficient to charge him in court; and
2. Right to bail.

In cases where bail is authorized, bail should be granted before arraignment, otherwise the accused will be precluded from filing a motion to quash which is to be done before arraignment. If the information is quashed and the case is dismissed, there would be no need for the arraignment of the accused.

To condition the grant of bail on his arraignment would be to place him in a position where he has to choose between:

1. Filing a motion to quash and thus delay his release until his motion can be resolved because prior to its resolution, he cannot be arraigned; and
2. Foregoing the filing of a motion to quash so

that he can be arraigned at once and thereafter be released on bail.

These scenarios undermine the accused's constitutional right not to be put on trial except upon valid complaint or information sufficient to charge him with a crime and his right to bail (*Lavides v. CA, G.R. No. 129670, February 1, 2000*).

NOTE: It should not be taken to mean that the hearing on a petition for bail should at all times precede arraignment, because the rule is that a person deprived of his liberty by virtue of his arrest or voluntary surrender may apply for bail as soon as he is deprived of his liberty, even before a complaint or information is filed against him (*Serapio v. Sandiganbayan, G.R. No. 148468, January 28, 2003*).

NOTE: Right to bail is available to aliens during pendency of deportation proceedings. However he must prove the following:

1. He is not a flight risk
2. He will abide with all orders and processes of the extradition court (*Government of Hong Kong Special Administrative Region v. Judge Olalia, G.R. No. 153675, April 19, 2007*).

PRESUMPTION OF INNOCENCE

Basis

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved (*Sec. 14(2), Art 3, 1987 Constitution*).

Every circumstance favoring the innocence of the accused must be taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment (*People v. Austria, G.R. No. 55109, April 8, 1991*).

It can be invoked only by an individual accused of a criminal offense; a corporate entity has no personality to invoke the same.

The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty (*People v. Andaya, G.R. No. 183700, October 13, 2014*).



Rules regarding presumption of innocence

1. The prosecution has the burden to prove the guilt of the accused beyond reasonable doubt; (*People v. Colcol, Jr., 219 SCRA 107, February 19, 1993*)
2. The prosecution must rely on the strength of its evidence and not in the weakness of the defense; (*People v. Solis, 182 SCRA 182, February 14, 1990*)
3. Conviction of an accused must be based on the strength of the prosecution evidence and not on the weakness or absence of evidence of the defense; (*People v. Mirondo, G.R. No. 210841, October 14, 2015*)
4. The prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal; (*Delarivav. People, G.R. No. 212940, September 16, 2015*)
5. Generally, flight, in the absence of a credible explanation, would be a circumstance from which an inference of guilt might be established, for a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence. It has been held, however, that non-flight may not be construed as an indication of innocence either. There is no law or dictum holding that staying put is proof of innocence, for the Court is not blind to the cunning ways of a wolf which, after a kill, may feign innocence and choose not to flee. In Cristina's case, she explained that she took flight for fear of her safety because of possible retaliation from her husband's siblings. The Court finds such reason for her choice to flee acceptable. She did not hide from the law but from those who would possibly do her harm(*People v. Samson, G.R. No. 214883, September 2, 2015*).

Equipoise rule

When the evidence of both sides is equally balanced, the constitutional presumption of innocence should tilt the scales in favor of the accused(*Corpuz v. People, G.R. No. 74259, February 14, 1991*).

In order that circumstantial evidence may warrant conviction, the following requisites must concur:

1. There is more than one circumstance;
2. The facts from which the inferences are derived are proven; and
3. The combination of all the circumstances is such as to produce conviction beyond reasonable doubt(*People v. Bato, G.R. No. 113804, January 16, 1998*).

RIGHT TO BE HEARD

It means the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause of the defense and acts accordingly. It is an efficient and truly decisive legal assistance, and not simply a perfunctory representation(*People v. Bermas, G.R. No. 120420, April 21, 1999*).

The right of the accused to present evidence is guaranteed by no less than the Constitution itself. Article III, Section 14(2) thereof, provides that in all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel. This constitutional right includes the right to present evidence in one's defense, as well as the right to be present and defend oneself in person at every stage of the proceedings. Stripping the accused of all his pre-assigned trial dates constitutes a patent denial of the constitutionally guaranteed right to due process(*Villareal v. People, G.R. No. 151258, February 1, 2012*).

Q: In a murder case, Ginges was convicted in the trial court but was not given the right to testify and to present additional evidence on his behalf. Is the conviction correct?

A: NO. An accused has the constitutional right "to be heard by himself and counsel" and the right "to testify as a witness in his own behalf." The denial of such rights is a denial of due process. The constitutional right of the accused to be heard in his defense is inviolate. "No court of justice under our system of government has the power to deprive him of that right" (*People v. Lumague, G.R. No. L-53586, January 30, 1982*).

ASSISTANCE OF COUNSEL

The right of a person under investigation is to have a "competent and independent counsel preferably of his own choice." The purpose is to preclude the slightest coercion as would lead the accused to admit something else (*People v. Evanoria, 209 SCRA 577, June 8, 1992*).

Elements of the Right to Counsel

1. Court's duty to inform the accused of his right to counsel before being arraigned;
2. It must ask him if he desires the services of counsel;
3. If he does, and is unable to get one, the Court must give him one; if the accused wishes to procure private counsel, the Court must give him time to obtain one; and
4. Where no lawyer is available, the Court may appoint any person resident of the province and of good repute for probity and ability.



NOTE: While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of petitioner's capacity to represent herself, and no duty rests on such body to furnish the person being investigated with counsel. The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service (*Carbonel v. CSC, G.R. No. 187689, September 7, 2010*).

NOTE: Assistance of counsel is not mandatory in a police line-up. (1993, 1997, 2012 Bar)

The right to counsel commences from the moment the investigating officer starts to ask questions to illicit information or confession or admission (*Gamboa v. Judge Cruz, G.R. No. L-56291, June 27, 1988*).

A PAO lawyer can be considered an independent counsel within the contemplation of Sec 12, Art III, 1987 Constitution

A PAO lawyer can be considered an independent counsel within the contemplation of the Constitution considering that he is not a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse of the accused-appellant. Thus, the assistance of a PAO lawyer satisfies the constitutional requirement of a competent and independent counsel for the accused (*People v. Bacor, G.R. No. 122895, April 30, 1999*).

Q: Several individuals were tried and convicted of Piracy in Philippine Waters as defined in PD 532. However, it was discovered that the lawyer, Ms. Cantos, who represented them was not a member of the bar although evidence shows that she was knowledgeable in the rules of legal procedure. The accused now allege that their conviction should be set aside since they were deprived of due process. Are they correct?

A: NO. Sec. 1 of Rule 115 of the Revised Rules of Criminal Procedure states that "upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel." By analogy, but without prejudice to the sanctions imposed by law for the illegal practice of law, it is amply shown that the rights of accused were sufficiently and properly protected by the appearance of Ms. Cantos. An examination of the

record will show that she knew the technical rules of procedure. Hence, there was a valid waiver of the right to sufficient representation during the trial, considering that it was unequivocally, knowingly, and intelligently made and with the full assistance of a *bona fide* lawyer, Atty. Dani Lacap. Accordingly, denial of due process cannot be successfully invoked where a valid waiver of rights has been made (*People v. Tulin, G.R. No. 111709, August 30, 2001*).

NOTE: In *Flores v. Ruiz, G.R. No. L-35707, May 31, 1979*, the Supreme Court held that the right to counsel during the trial cannot be waived, because "even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of procedure, and without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence."

Q: Mao was criminally charged in court. He hired Justin as counsel who handles high-profile clients. Due to his many clients, Justin cannot attend the hearing of the case of Mao. He requested many times to have the hearings postponed. The case dragged on slowly. Judge Oliver Punay, in his desire to finish the case as early as practicable under the continuous trial system, appointed a counsel *de officio* and withdrew the counsel *de parte*. Is the action of the judge valid?

A: YES. The appointment of counsel *de officio* under such circumstances is not proscribed under the Constitution. The preferential discretion is not absolute as would enable an accused to choose a particular counsel to the exclusion of others equally capable. The choice of counsel by the accused in a criminal prosecution is not a plenary one. If the counsel deliberately makes himself scarce the court is not precluded from appointing a counsel *de officio* whom it considers competent and independent to enable the trial to proceed until the counsel of choice enters his appearance. Otherwise the pace of criminal prosecution will entirely be dictated by the accused to the detriment of the eventual resolution of the case (*People v. Larrañaga, G.R. No. 138874-75, February 3, 2004*).

RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION

Purpose

1. To furnish the accused with such a description of the charge against him as will enable him to make his defense;
2. To avail himself of his conviction or acquittal for protection against further prosecution for the same cause;



3. To inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction, if one should be had (*US v. Karelsen, G.R. No. 1376, January 21, 1904*).

Requisites for properly informing the accused of the nature and cause of accusation

1. Information must state the name of the accused;
2. Designation given to the offense by statute;
3. Statement of the acts or omission so complained of as constituting the offense;
4. Name of the offended party;
5. Approximate time and date of commission of the offense;
6. Place where offense was committed; and
7. Every element of the offense must be alleged in the complaint or information.

NOTE: The purpose of an Information is to afford an accused his right to be informed of the nature and cause of the accusation against him. It is in pursuit of this purpose that the Rules of Court require that the Information allege the ultimate facts constituting the elements of the crime charged. Details that do not go into the core of the crime need not be included in the Information, but may be presented during trial. The rule that evidence must be presented to establish the existence of the elements of a crime to the point of moral certainty is only for purposes of conviction. It finds no application in the determination of whether or not an Information is sufficient to warrant the trial of an accused (*People v. Sandiganbayan, G.R. No. 160619, September 9, 2015*).

It is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless such date and time are essential ingredients of the offenses charged (*People v. Nuyok, G.R. No. 195424, June 15, 2015*).

Determination of the real nature of the crime

Description, not designation of the offense, is controlling. The real nature of the crime charged is determined from the recital of facts in the information. It is neither determined based on the caption or preamble thereof nor from the specification of the provision of the law allegedly violated.

NOTE: The accused cannot be convicted thereof if the information fails to allege the material elements of the offense even if the prosecution is able to present evidence during the trial with respect to such elements.

The right to be informed of the nature and cause of accusation cannot be waived. However, the defense may waive the right to enter a plea and let the court enter a plea of "not guilty."

Variance Doctrine

In spite of the difference between the crime that was charged and that which was eventually proved, the accused may still be convicted of whatever offense that was proved even if not specifically set out in the information provided it is necessarily included in the crime charged (*Teves v. Sandiganbayan, G.R. No. 154182, December 17, 2004*).

RIGHT TO SPEEDY, IMPARTIAL AND PUBLIC TRIAL

Right to speedy trial (2000, 2001 Bar)

The term "speedy" means free from vexatious, capricious and oppressive delays.

In determining whether the accused's right to speedy trial was violated, the delay should be considered in view of the entirety of the proceedings. The factors to balance are the following:

- (a) Duration of the delay;
- (b) Reason thereof or;
- (c) Assertion of the right or failure to assert it; and
- (d) Prejudice caused by such delay.

Mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings (*Saldariega v. Panganiban, G.R. Nos. 211933 & 211960, April 15, 2015*).

NOTE: The denial of the right to speedy trial is a ground for acquittal.

The right to speedy trial [Sec. 14(2)] particularly refers to criminal prosecutions which are at the trial stage, while the right to speedy disposition of cases (Sec. 16) applies to all cases before judicial, quasi-judicial or administrative bodies.

Right to impartial trial

Impartial trial means that the accused is entitled to cold neutrality of an impartial judge, one who is free from interest or bias.

Right to speedy disposition of cases



This is a right that is available to all persons in all kinds of proceedings, whether criminal, civil, or administrative, unlike the right to speedy trial which is available only to an accused in a criminal case and, therefore, only the accused may invoke such.

The right to speedy disposition of cases is different from the right to speedy trial to the extent that the former applies to all cases, whether judicial, quasi-judicial, or administrative cases (1987 Constitution, Art. III, Sec. 16); whereas, the latter applies to criminal cases only (1987 Constitution, Art. III, Sec. 14(2)).

Violation

The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried (*Roquero v. Chancellor of UP-Manila*, G.R. No. 181851, March 9, 2010).

Q: Luz Almeda, Schools Division Superintendent of the DepEd, was being charged of violation of R.A. 3019. However, the preliminary investigation proceedings took more than 11 long years to resolve due to the repeated indorsement of the case between the Office of the Ombudsman (Ombudsman) and the Office of the Special Prosecutor (OSP). It is attributed to the Ombudsman's failure to realize that Almeda was not under the jurisdiction of the OSP or the Sandiganbayan. Almeda then prays for the dismissal of the case against her, claiming that there was a violation of her right to speedy trial. Is she correct?

A: YES. The right includes within its contemplation the periods before, during and after trial, such as preliminary investigations and fact-finding investigations conducted by the Office of the Ombudsman. Further, this right applies to all cases pending before all judicial, quasi-judicial or administrative bodies and not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature [*Almeda v. Office of the Ombudsman (Mindanao)*, G.R. No. 204267, July 25, 2016].

Right to public trial

GR:

1. Trial must be public in order to prevent possible abuses which may be committed against the accused; and

2. The attendance at the trial is open to all, irrespective of their relationship to the accused.

XPN: If the evidence to be adduced is "offensive to decency or public morals," the public may be excluded.

NOTE: Under Sec. 21, Rule 119 of the Rules of Criminal Procedure it is provided that the judge may *motu proprio* exclude the public from the court room when the evidence to be adduced is offensive to decency and public morals.

In a constitutional sense, public trial is not synonymous with publicized trial. The right to a public trial belongs to the accused. The requirement of a public trial is satisfied by the opportunity of the members of the public and the press to attend the trial and to report what they have observed. The accused's right to a public trial should not be confused with the freedom of the press and the public's right to know as a justification for allowing the live broadcast of the trial. The tendency of a high profile case like the subject case to generate undue publicity with its concomitant undesirable effects weighs heavily against broadcasting the trial. Moreover, the fact that the accused has legal remedies after the fact is of no moment, since the damage has been done and may be irreparable. It must be pointed out that the fundamental right to due process of the accused cannot be afforded after the fact but must be protected at the first instance (*In Re: Petition for Radio and Television Coverage of the Multiple Murder Cases against Maguindanao Governor Zaldy Ampatuan*, A.M. No. 10-11-5-SC, October 23, 2012).

RIGHT OF CONFRONTATION

Two-Fold Purpose

1. To afford the accused an opportunity to test the testimony of a witness by cross-examination; and
2. To allow the judge to observe the deportment of the witness.

If the failure of the accused to cross-examine a witness is due to his own fault or was not due to the fault of the prosecution, the testimony of the witness should not be excluded.

The affidavits of witnesses who are not presented during trial are inadmissible for being hearsay. The accused is denied the opportunity to cross-examine the witnesses.

NOTE: Depositions are admissible under circumstances provided by the Rules of Court.



RIGHT TO COMPULSORY PROCESS TO SECURE ATTENDANCE OF WITNESS AND PRODUCTION OF EVIDENCE

Means available to the parties to compel the attendance of witnesses and the production of documents and things needed in the prosecution or defense of a case

1. Subpoena *ad testificandum* and subpoena *duces tecum*;
2. Depositions and other modes of discovery; and
3. Perpetuation of testimonies.

Ad Testificandum vs. Duces Tecum

AD TESTIFICANDUM	DUCES TECUM
A process directed to a person requiring him to attend and to testify at the hearing or trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition.	The person is also required to bring with him any books, documents, or other things under his control.

NOTE: The subpoena *duces tecum* shall contain a reasonable description of the books, documents or things demanded which must appear to the court as *prima facie* relevant.

Requirements for the exercise of the right to secure attendance of witness

1. The witness is really material;
2. The attendance of the witness was previously obtained;
3. The witness will be available at the time desired; and
4. No similar evidence could be obtained.

NOTE: Right to cross-examine is demandable only during trials. Thus, it cannot be availed of during preliminary investigations.

Principal exceptions to the right of confrontation

1. of dying declarations and all exceptions to the hearsay rule;
2. Trial in *absentia* under Sec.14(2) of Art. III of the Constitution; and
3. Child testimony.

TRIAL IN ABSENTIA

Trials in *absentia* allows the accused to be absent at the trial (*Lavides v. CA, G.R. No. 129670, February 1, 2000*).

Elements of trials in *absentia*

1. Accused has been validly arraigned;
2. Accused has been duly notified of the dates of hearing; and
3. Failure to appear is unjustifiable.

The presence of the accused is mandatory in the following instances

1. During arraignment and plea;
2. During trial, for identification, unless the accused has already stipulated on his identity during the pre-trial and that he is the one who will be identified by the witnesses as the accused in the criminal case; and
3. During promulgation of sentence, unless for a light offense (*Ibid.*).

NOTE: While the accused is entitled to be present during promulgation of judgment, the absence of his counsel during such promulgation does not affect its validity.

Promulgation of judgment in *absentia* is valid provided the following are present

1. Judgment be recorded in the criminal docket; and
2. Copy be served upon accused or counsel.

NOTE: Recording the decision in the criminal docket of the court satisfies the requirement of notifying the accused of the decision wherever he may be (*Estrada v. People, G.R. No. 162371, August 25, 2005*).

When presence of the accused is a required

1. Arraignment and plea;
2. During trial, for identification; and
3. Promulgation of sentence.

XPN: Light offense where accused need not personally appear.

WRIT OF HABEAS CORPUS

The writ of *habeas corpus* is a writ issued by a court directed to the person detaining another, commanding him to produce the body of the



detainee at a designated time and place, and to show the cause of his detention.

Called the “great writ of liberty,” the writ of habeas corpus “was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.” The remedy of habeas corpus is extraordinary and summary in nature, consistent with the law’s “zealous regard for personal liberty” (*In the Matter of the Petition for Habeas Corpus of Datukan Malang Salibo*, G.R. No. 197597, April 8, 2015).

Privilege of the Writ of Habeas Corpus

The right to have an immediate determination of the legality of the deprivation of physical liberty.

When available

For a person deprived of liberty due to mistaken identity. In such cases, the person is not under any lawful process and is continuously being illegally detained (*In the Matter of the Petition for Habeas Corpus of Datukan Malang Salibo*, *Ibid.*).

It may be availed of as a post-conviction remedy or when there is an alleged violation of the liberty of abode (*Ibid.*).

It may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person. When forcible taking and disappearance—not arrest and detention—have been alleged, the proper remedy is not habeas corpus proceedings, but criminal investigation and proceedings. Habeas corpus generally applies to all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto (*Martinez v. Mendoza*, G.R. No. 153795, August 17, 2006).

If the detainee’s incarceration is by virtue of a judicial order in relation to criminal cases subsequently filed against them, the remedy of habeas corpus no longer lies (*Ilagan v. Enrile*, G.R. No. 70748, October 21, 1985).

Requisites for the valid suspension of the privilege of the writ of habeas corpus

1. There must be an actual invasion, insurrection or rebellion; and
2. Public safety requires the suspension.

The writ applies only to persons judicially charged for rebellion or offenses inherent in or directly

connected with invasion and anyone arrested or detained during suspension must be charged within 3 days. Otherwise, he should be released.

WRIT OF AMPARO, HABEAS DATA AND KALIKASAN

WRIT OF AMPARO (1991, 2013 Bar)

A remedy available to any person who’s right to life, liberty, and security has been violated or is threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ covers extralegal killings and enforced disappearances or threats thereof (*Rule on Writ of Amparo*, Sec.1).

Applicability

Writ of Amparo does not apply to a child custody case

When what is involved is the issue of child custody and the exercise of parental rights over a child, who, for all intents and purposes, has been legally considered a ward of the State, the *Amparo* rule cannot be properly applied. To reiterate, the privilege of the writ of amparo is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of a similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual. It is envisioned basically to protect and guarantee the right to life, liberty and security of persons, free from fears and threats that vitiate the quality of life (*Yusay v. Segui*, G.R. No. 193652, August 5, 2014).

Writ of Amparo does not cover the Constitutional right to travel (*Reyes v. Gonzales*, G.R. No. 182161, December 3, 2009).

Applicable even though petitioners already escaped detention

In case were the victims of abduction were able to escape, it should be stressed that they are now free from captivity not because they were released by virtue of a lawful order or voluntarily freed by their abductors. Understandably, since their escape, they have been under concealment and protection by private citizens because of the threat to their life, liberty, and security. The threat vitiates their free will as they are forced to limit their movements or activities. Precisely because they are being shielded from the perpetrators of their abduction, they cannot be expected to show evidence of overt acts of threat such as face-to-face intimidation or written threats to their life, liberty and security.



Nonetheless, the circumstances of their abduction, detention, torture, and escape reasonably support a conclusion that there is an apparent threat that they will again be abducted, tortured, and this time, even executed. These constitute threats to their liberty, security, and life, actionable through a petition for a Writ of Amparo (*Sec. of National Defense and AFP Chief of Staff v. Manalo, G.R. No. 180906, October 7, 2008*).

Extralegal killings

These pertain to killings committed without due process of law, i.e., without legal safeguards or judicial proceedings.

Enforced disappearance

Arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law [*R.A. 10353, Sec. 3(b)*].

As clarified in *Navia*, with the enactment of R.A. No. 9851 [now R.A. No. 10353], the Amparo Rule is now a procedural law anchored, not only on the constitutional rights to life, liberty and security, but on a concrete statutory definition as well of what an 'enforced or involuntary disappearance' is. Therefore, A.M. No. 07-9-12-SC's reference to enforced disappearances should be construed to mean the enforced or involuntary disappearance of persons contemplated in Section 3(g) of R.A. No. 9851 [now Sec. 3(b), R.A. 10353]. Meaning, in probing enforced disappearance cases, courts should read A.M. No. 07-9-12-SC in relation to R.A. No. 9851 [should now be read as R.A. No. 10353]. Guided by the parameters of R.A. No. 9851 [now R.A. No. 10353], we can readily discern that Ku's circumstance does not come under the statutory definition of an enforced or involuntary disappearance. Indeed, Ku was arrested by agents of the BI, but there was no refusal on the part of the BI to acknowledge such arrest nor was there any refusal to give information on the whereabouts of Ku. Neither can it be said that the BI had any intention to remove Ku from the protection of the law for a prolonged time (*Mison v. Gallegos, G.R. No. 210759, June 23, 2015*).

Main advantages of the Writ of Amparo over the Writ of Habeas Corpus

BASIS	WRIT OF AMPARO	WRIT OF HABEAS CORPUS
<i>As to availability of interim reliefs</i>	Interim reliefs, such as temporary protection order, witness protection order, inspection order and production order, are available.	No interim reliefs.
<i>As to acts covered</i>	Covers acts which violate or threaten to violate the right to life, liberty and security.	Limited to cases involving actual violation of right to liberty.
<i>As to allowability of denial</i>	General denial is not allowed; detailed return is required of the respondent.	Mere denial is a ground for dismissal of the petition.
<i>As to applicability of presumption of regularity</i>	No presumption of regularity; must prove observance of extraordinary diligence.	Presumption of regular performance of official duty is applicable.
<i>As to enforceability</i>	Enforceable anywhere in the Philippines.	Only enforceable anywhere in the Phil. if filed with the CA or SC justice.
<i>As to payment of docket fees</i>	Exempted from payment of docket fees.	Not exempted.
<i>As to effect of release of detained person</i>	Release of detained person does not render the petition moot and academic.	Release of detained person renders it moot and academic.



Q: Engr. Peregrina disappeared one day and his wife filed a petition for the Writ of *Amparo* with the CA directed against the PNP, claiming that the “unexplained uncooperative behavior” of the respondents request for help and their failure and refusal to extend assistance in locating the whereabouts of Peregrina were indicative of their actual physical possession and custody of the missing engineer.” The PNP was held responsible for the “enforced disappearance” of Engr. Peregrina. Is this valid?

A: YES. The government in general, through the PNP and the PNP-CIDG, and in particular, the Chiefs of these organizations together with Col. Kasim, should be held fully accountable for the enforced disappearance of Peregrina. Given their mandates, the PNP and the PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise extraordinary diligence that the *Amparo* rule requires. (*Razon v. Tagitis*, G.R. No. 182498, December 3, 2009)

Requisites for liability of the President for the extralegal killings and enforced disappearances or threats committed by a public official or employee under the principle of command responsibility: (S-S, K2, F)

1. The existence of a Superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate;
2. The superior **Knew** or had reason to know that the crime was about to be or had been committed;
3. The superior has **Knowledge** that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission; and
4. The superior **Failed** to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.

NOTE: Knowledge of the commission of irregularities, crimes or offenses is presumed when: **(W-R-S)**

1. The acts are **Widespread** within the government official's area of jurisdiction;
2. The acts have been **Repeatedly** or regularly committed within his area of responsibility; and

3. Members of his immediate Staff or office personnel is involved (*In Re: Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez v. Macapagal-Arroyo*, G.R. No. 193160, November 15, 2011).

WRIT OF HABEAS DATA

(See discussion under Right to privacy, after the Anti-Wiretapping Law)

WRIT OF KALIKASAN

A remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces (*A.M. No. 09-6-8-SC*).

Essence for the promulgation of the writ

There is an increasing awareness of the need to protect the environment and conserve the finite resources of the Earth. In fact, the urgent call for the preservation of the environment was recognized by the international community as early as June 16, 1972 during the Stockholm Declaration. After almost two decades, the Stockholm Declaration was reaffirmed by the Rio Declaration.

Our very own Constitution also considers as a State policy the obligation of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. This right was recognized as an enforceable right in the case of *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993, wherein the Supreme Court recognized the “Intergenerational Responsibility” of the people over the Earth's natural resources. The first issue it resolved was the issue of *locus standi* on the part of the petitioners who claimed to represent their generation, and generations yet unborn. The Court ruled in favor of the petitioners saying that the minor petitioners' assertion of their right to a sound environment is a performance of their duty to preserve such for the succeeding generations.

More importantly, the case of *Oposa* clarified the fact that although the right to a balanced and healthful ecology is found in the Declaration of Principles of the Constitution, this right is of equal importance



with the civil and political rights found in the Bill of Rights. Thus, in the exercise of the Supreme Court's power to promulgate rules concerning the protection and enforcement of constitutional rights, an environmental writ was established to further to protect a person's environmental right when measures taken by the executive and the legislative are insufficient.

Nature of the Writ of *Kalikasan*

The Writ of *Kalikasan* is an extraordinary remedy which may be issued depending on the magnitude of the environmental damage. The environmental damage must be one which prejudices the life, health, or property of inhabitants in two or more cities or provinces, or that which transcends political and territorial boundaries.

It is also a remedy which enforces the right to information by compelling the government or a private entity to produce information regarding the environment that is within their custody.

Persons who may file a petition for a writ of *kalikasan*

The Writ of *Kalikasan* may be availed of by any of the following:

- a. Natural or juridical persons;
- b. Entities authorized by law; or
- c. People's organizations, non-governmental organizations, or any public interest group accredited by or registered with any government agency.

The petition must be "on behalf of persons whose constitutional right to have balanced and healthful ecology is violated" and involving environmental damage that injures the life, health, or property of inhabitants in two or more cities or provinces.

Persons against whom a petition for a writ of *kalikasan* is filed

- a. A public official or employee; or
- b. A private individual or entity.

Where to file the petition

- a. The Supreme Court; or
- b. Any station of the Court of Appeals.

NOTE: The rationale for this is that the jurisdiction of both tribunals is national in scope which

corresponds with the magnitude of the environmental damage contemplated by the Rules.

Procedure for the issuance of a writ of *kalikasan*

The petitioner shall file his application for a Writ of *Kalikasan* with the proper tribunal as specified in the preceding paragraph. The filing of a petition for the writ does not preclude the filing of separate civil, criminal, or administrative actions.

NOTE: The petitioner does not need to pay docket fees. While this is similar to the rule on filing fees for civil and criminal cases under the Rules, the exemption from payment of docket fees under this remedy is a necessary consequence of the fact that no award of damages to private individuals can be made under the writ. In comparison to civil or criminal cases under the Rules of Civil Procedure, the filing fees need not be paid at the time of filing but the same shall be imputed from the award of damages that may be given to the complainant in the judgment.

SELF-INCRIMINATION CLAUSE

Basis

No person shall be compelled to be a witness against himself (1987 Constitution, Sec. 17, Art. III). **(1990, 1992, 1998, 2006 Bar)**

This constitutional privilege has been defined as a protection against testimonial compulsion, but this has since been extended to any evidence "communicative in nature" acquired under circumstances of duress (*People v. Olvis*, G.R. No. 71092, September 30, 1987).

NOTE: What is prohibited is the use of physical or moral compulsion to extort communication from the witness or to otherwise elicit evidence which would not exist were it not for the actions compelled from the witness—NOT the inclusion of his body in evidence when it may be material. For instance, substance emitted from the body of the accused may be received as evidence in prosecution for acts of lasciviousness (*US v. Tan Teng*, 23 Phil. 145, September 7, 1912). And morphine forced out of the mouth of the accused may also be used as evidence against him (*US v. Ong Siu Hong*, 36 Phil. 735, August 3, 1917).

Consequently, although accused-appellant insists that hair samples were forcibly taken from him and submitted to the NBI for forensic examination, the hair samples may be admitted in evidence against him, for what is proscribed is the use of testimonial compulsion or any evidence communicative of the nature acquired from the accused under duress.



(*People v. Rondero*, 320 SCRA 333, 399-401, December 9, 1999).

The right is available in:

1. Criminal cases;
2. Civil cases;
3. Administrative cases;
4. Impeachment;
5. Other legislative investigations that possess a criminal or penal aspect.

NOTE: It does not apply to private investigations done by private individual (*BPI v. CASA*, GR.No.149454, May 28, 2004). When the privilege against self-incrimination is *violated outside of court*, say, by the police, then the testimony, as already noted, is not admissible under the exclusionary rule. When the privilege is *violated by the court itself*, that is, by the judge, the court is ousted of its jurisdiction, all its proceedings are null and void, and it is as if no judgment has been rendered (*Chavez v. CA*, G.R. No. L-29169, August 19, 1968).

NOTE: This right may be invoked not only in criminal cases, but even in administrative proceedings that partake of a criminal nature (*Secretary of Justice v. Lantion*, 322 SCRA 160, January 18, 2000). This may even be invoked during inquiries in aid of legislation in the Congress, and even in impeachment proceedings (*Bengzon v. Senate Blue Ribbon Committee*, 203 SCRA 767, November 20, 1991).

Incriminating question

A question tends to incriminate when the answer of the accused or the witness would establish a fact which would be a necessary link in a chain of evidence to prove the commission of a crime by the accused or the witness.

NOTE: The privilege against self-incrimination is not self-executing or automatically operational. It must be claimed. It follows that the right may be waived, expressly, or impliedly, as by a failure to claim it at the appropriate time.

The privilege against self-incrimination can be claimed only when the specific question, incriminatory in character, is actually addressed to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, to decline to appear before the court at the time appointed (*Rosete v. Lim*, G.R. No. 136051, June 8, 2006).

Right against self-incrimination of an accused vs. Right against self-incrimination of a witness

ACCUSED	ORDINARY WITNESS
Can refuse to take the witness stand altogether by invoking the right against self-incrimination.	Cannot refuse to take the witness stand; can only refuse to answer specific questions which would incriminate him in the commission of an offense.

NOTE: For, in reality, the purpose of calling an accused as a witness for the People would be to incriminate him. The rule positively intends to avoid and prohibit the certainly inhuman procedure of compelling a person "to furnish the missing evidence necessary for his conviction" (*Chavez v. CA*, G.R. L-29169, August 19, 1968).

FOREIGN LAWS

Q: Alienmae is a foreign tourist. She was asked certain questions in regard to a complaint that was filed against her by someone who claimed to have been defrauded by her. Alienmae answered all the questions asked, except in regard to some matters in which she invoked her right against self-incrimination. When she was pressed to elucidate, she said that the questions being asked might tend to elicit incriminating answers insofar as her home state is concerned. Could Alienmae invoke the right against self-incrimination if the fear of incrimination is in regard to her foreign law? (2014 Bar)

A: NO. Alienmae cannot invoke her right against self-incrimination even if the fear of incrimination is in regard to her foreign law. Under the territoriality principle, the general rule is that a state has jurisdiction over all persons and property within its territory. The jurisdiction of the nation within its own territory is necessary, exclusive, and absolute. However, there are a few exceptions on when a state cannot exercise jurisdiction even within its own territory, to wit: 1) foreign states, head of states, diplomatic representatives, and consuls to a certain degree; 2) foreign state property; 3) acts of state; 4) foreign merchant vessels exercising rights of innocent passage or arrival under stress; 5) foreign armies passing through or stationed in its territories with its permission; and 6) such other persons or property, including organizations like the United Nations, over which it may, by agreement, waive jurisdiction. Seeing that the circumstances surrounding Alienmae do not fall under those exceptions, that she is a foreign tourist who received



BILL OF RIGHTS

a complaint for fraud, such principle of territoriality can be exercised by the State to get the information it needs to proceed with the case. (*UPLC Suggested Answers to the Bar*)

APPLICATION

Re-enactment of a crime

A person who is made to re-enact a crime may rightfully invoke his privilege against self-incrimination, because by his conduct of acting out how the crime was supposedly committed, he thereby practically confesses his guilt by action which is as eloquent, if not more so, than words (*People v. Olvis, G.R. No. 71092, September 30, 1987*).

Handwriting is covered by the right against self-incrimination

Under Sec. 17, Art. III of the 1987 Constitution, "no person shall be compelled to be a witness against himself." Since the provision prohibits compulsory testimonial incrimination, it does not matter whether the testimony is taken by oral or written. Writing is not purely a mechanical act because it requires the application of intelligence and attention. The purpose of the privilege is to avoid and prohibit thereby the repetition and recurrence of compelling a person, in a criminal or any other case, to furnish the missing evidence necessary for his conviction (*Bermudez v. Castillo, Prec. Rec. No. 714-A, July 26, 1937; Beltran v. Samson, G.R. No. 32025, September 23, 1929*).

NOTE: There is similarity between one who is compelled to produce a private document (*Boyd v. US, 116 U.S. 616, February 1, 1886*), and one who is compelled to furnish a specimen of his handwriting, for in both cases, the witness is required to furnish evidence against himself.

Inapplicability of the right against self-incrimination to juridical persons

It is not available to juridical persons as "it would be a strange anomaly to hold that a state having chartered a corporation to make use of certain franchises, could not, in the exercise of sovereignty, inquire how these franchises had been employed, and whether they have been abused, and demand the production of the corporate books and papers for that purpose" (*Bataan Shipyard and Engineering Corporation v. PCG, G.R. No. 75885, May 27, 1987*).

IMMUNITY STATUTES

Purpose

If an accused is given some kind of immunity by the State in exchange for his testimony against his co-

accused in a criminal case, he may no longer validly invoke his right against self-incrimination.

Two types of Immunity Statutes

1. Used-and-derivative-use Immunity; and

A witness is only assured that his or her particular testimony and evidence derived from it will not be used against him or her in a subsequent prosecution.

2. Transactional Immunity.

A witness can no longer be prosecuted for any offense whatsoever arising out of the act or transaction (*Mapa v. Sandiganbayan, G.R. No. 100295, April 26, 1994*).

USED-AND-DERIVATIVE-USE IMMUNITY	TRANSACTIONAL IMMUNITY
Only prevents the prosecution from using the witness' own testimony, or any evidence derived from the testimony, against him. However, should the prosecutor acquire evidence substantiating the supposed crime— independent of the witness's testimony— the witness may then be prosecuted for the same.	Completely protects the witness from future prosecution for crimes related to his or her testimony.
Does not protect the witness quite as much, because here the witness is only protected from future prosecution based on exactly what he or she says on the witness stand, and not from any evidence the prosecutor finds to substantiate the witness' crime.	Gives the witness the most protection from prosecution because that witness can never be prosecuted in the future for any crimes related to his or her testimony. Also known as blanket or total immunity.

Q: The Republic of the Philippines filed a case against Westinghouse Corporation before the US District Court due to the belief that Westinghouse contract for the construction of the Bataan Nuclear Power Plant, which was



brokered by Herminio Disini's company, had been attended by anomalies. Having worked as Herminio's executive in the latter's company for 15 years, the Republic asked Jesus Disini to give his testimony regarding the case.

An immunity agreement was entered between Jesus and the Republic which he undertook to testify for his government and provide its lawyers with information needed to prosecute the case. Said agreement gave Jesus an assurance that he shall not be compelled to give further testimonies in any proceeding other than the present matter. Jesus complied with his undertaking. But after 18 years, *Sandiganbayan* issued a subpoena against him, commanding him to testify and produce documents before said court in an action filed against Herminio. Can Jesus be compelled to testify before the *Sandiganbayan*?

A: NO. A contract is the law between the parties. It cannot be withdrawn except by their mutual consent. In the case at bar, the Republic, through the PCGG, offered Jesus not only criminal and civil immunity but also immunity against being compelled to testify in any proceeding other than the civil and arbitration cases identified in the agreement, just so he would agree to testify. When the Republic entered in such agreement, it needs to fulfill its obligations honorably as Jesus did. The government should be fair (*Disini v. Sandiganbayan*, G.R. No. 180564, June 22, 2010).

Q: Lisette and Angela were called before the AGRABA Board to elicit and determine the surrounding facts and circumstances of the assassination of Benigno Aquino Sr. Sec. 5 of P.D. 1886 creating the Board compels a person to take the witness stand, testify or produce evidence, under the pain of contempt if they failed or refused to do so. Lisette and Angela gave their testimonies without having been informed of their right to remain silent and that any statement given by them may be used against them. The Board then used the information from the testimonies of Lisette and Angela to support the prosecution's case against them in *Sandiganbayan*. The Board contends that the fact that Lisette and Angela testified before the Board constituted as a valid waiver of their constitutional rights to remain silent and not to be compelled to be a witness against themselves.

1. Was there a valid waiver of the rights?
2. Are the testimonies of Lisette and Angela admissible in court?
3. How can the unconstitutional effects be reconciled?

A:

1. **None.** In the case at bar, Lisette and Angela were under the directive of law and under the compulsion of fear for the contempt powers of the Board. They were left with no choice but to provide testimonies before the Board.
2. **No.** The manner in which testimonies were taken from Lisette and Angela falls short of the constitutional standards both under the due process clause and under the exclusionary rule.
3. As a rule, such infringement of constitutional right renders inoperative the testimonial compulsion, meaning, the witness cannot be compelled to answer UNLESS a co-extensive protection in the form of IMMUNITY is offered. The only way to cure the law of its unconstitutional effects is to construe it in the manner as if IMMUNITY had in fact been offered. The applicability of the immunity granted by P.D. 1886 cannot be made to depend on a claim of the privilege against self-incrimination which the same law practically strips away from the witness (*Galman v. Pamaran*, G.R. Nos. 71208-09, August 30, 1985).

INVOLUNTARY SERVITUDE

Involutary servitude

It is the condition where one is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not.

GR: No involuntary servitude shall exist. (1993 Bar)

XPNS: (P-S-E-C-O-M)

1. **Punishment** for a crime for which the party has been duly convicted;
2. Personal military or civil **service** in the interest of national defense;
3. In naval **enlistment**, a person who enlists in a merchant ship may be compelled to remain in service until the end of a voyage;
4. *Posse comitatus* or the **conscription** of able-bodied men for the apprehension of criminals;
5. Return to work **order** issued by the DOLE Secretary or the President;
6. **Minors** under *patria potestas* are obliged to obey their parents.



Q: Yolanda is a stenographer in the RTC of Nueva Ecija. She is now retired, however she had unfinished work left in the RTC which were on appeal, so the Court of Appeals ordered her to finish her work. However, she refused to comply as she is already retired. CA cited her for contempt of court and incarcerated her. In return, Joy filed for a petition of Habeas Corpus arguing that her incarceration constitutes illegal detention and that the court making her finish her work is involuntary solitude. Will her petition prosper? Explain.

A: NO. The incarceration does not amount to illegal detention, contrary to her claim. Such incarceration is the consequence of her non-compliance with the court order. The Court of Appeals, ordering her to finish her work, does not amount to involuntary servitude either. The courts have the inherent power to issue such orders as are necessary for the administration of justice. Thus, the court may order her to finish her work even if she is no longer in the government service.

EXCESSIVE FINES AND CRUEL AND INHUMAN PUNISHMENTS

It has long been held that the prohibition of cruel and unusual punishments is generally aimed at the form or character of the punishment rather than its severity in respect of duration or amount, and applies to punishments which public sentiment has regarded as cruel or obsolete, for instance, those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like. Fine and imprisonment would not thus be within the prohibition. It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution.

NOTE: The fact that the punishment authorized by the statute is severe does not make it cruel and unusual (*Corpuz v. People*, G.R. No. 180016, April 29, 2014).

NOTE: Mere extinguishment of life alone does not constitute cruel, degrading, inhuman punishment. To be such, it must involve prolonged agony and suffering; it refers more to the nature of the punishment to be inflicted upon a convict, that which is shocking to the conscience of mankind under contemporary standards (*Leo Echegaray v. Secretary of Justice*, G.R. No. 132601, October 12, 1998).

Cruel and Inhuman penalty

A penalty is cruel and inhuman if it involves torture or lingering suffering (*e.g.* being drawn and quartered).

Degrading penalty

A penalty is degrading if it exposes a person to public humiliation (*e.g.* being tarred and feathered, then paraded throughout town).

NOTE: The power to re-impose the death penalty for certain heinous crimes is vested in the Congress; not in the President. After all, the power to define crimes and impose penalties is legislative in nature.

NON-IMPRISONMENT FOR DEBTS

Basis

No person shall be imprisoned for debt or non-payment of a poll tax (1987 Constitution, Sec. 20, Art. III). (1993, 1997, 2000, 2002 Bar)

Debt

It is any civil obligation arising from contract.

Poll tax

A specific sum levied upon any person belonging to a certain class without regard to property or occupation (*e.g.* community tax).

NOTE: A tax is not a debt since it is an obligation arising from law. Hence, its non-payment may be validly punished with imprisonment. Only poll tax is covered by the constitutional provision.

If an accused fails to pay the fines imposed upon him, this may result in his subsidiary imprisonment because his liability is *ex delicto* and not *ex contractu*.

Generally, a debtor cannot be imprisoned for failure to pay his debt. However, if he contracted his debt through fraud, he can be validly punished in a criminal action as his responsibility arises not from the contract of loan but from commission of a crime (*Lozano v. Martinez*, G.R. No. L-63419, December 18, 1986).

DOUBLE JEOPARDY (1999, 2000 Bar)

No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or



acquittal under either shall constitute a bar to another prosecution for the same act.

NOTE: In American case law, this right is sometimes referred to as "Res Judicata dressed in prison grey"

Two kinds of double jeopardy

1. Double jeopardy for the same offense; (*1st sentence, Sec. 21 of Art. III*); and
2. Double jeopardy for the same act (*2nd sentence, Sec. 21 of Art. III*); (*People v. Quijada, 259 SCRA 191, July 24, 1995*).

Requisites

Legal jeopardy attaches only upon:

1. Valid complaint or information;
2. Filed before a competent court;
3. The arraignment of the accused;
4. To which he had pleaded; and
5. Defendant was previously acquitted or convicted, or the case dismissed or otherwise terminated without his express consent (*Saldariega v. Panganiban, G.R. Nos. 211933 & 211960, April 15, 2015*).

NOTE: Consent of the accused to the dismissal cannot be implied or presumed; it must be expressed as to have no doubt as to the accused's conformity (*Caes v. IAC, 179 SCRA 54, November 6, 1989*).

To substantiate a claim of double jeopardy, the following must be proven:

1. A first jeopardy must have attached prior to the second;
2. The first jeopardy must have been validly terminated; and
3. The second jeopardy must be for the same offense or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or is a frustration thereof.

Rationale

To reconsider a judgment of acquittal places the accused twice in jeopardy for being punished for the crime of which he has already been absolved. There is reason for this provision of the Constitution. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and

capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight (*Lejano v. People, G.R. Nos. 176389 and 176864, December 14, 2010*).

Grant of demurrer to evidence operates as an acquittal

The general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:

The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.

Q: Former President Gloria Macapagal-Arroyo (GMA) filed a demurrer to evidence as a defense in the criminal case filed against her. The Supreme Court granted the said petition. The Office of the Ombudsman moved for the reconsideration of the decision. As a defense, GMA contends that the decision has effectively barred the consideration and granting of the motion for reconsideration of the State because doing so would amount to re-prosecution or revival of the charge against her despite her acquittal, and would thereby violate the constitutional prescription against double jeopardy. Is the contention of GMA tenable?

A: YES. The general rule is that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable. The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there (*Macapagal-Arroyo v. People of the Philippines, G.R. No. 220598, April 18, 2017*).



Related protections provided by the right against double jeopardy

1. Against a second prosecution for the same offense after acquittal;
2. Against a second prosecution for the same offense after conviction; and
3. Against multiple punishments for the same offense.

Exceptions to the right against double jeopardy

1. When the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction; (*Bangayan, Jr. v. Bangayan, G.R. No. 172777, and De Asis Delfin v. Bangayan, G.R. No. 172792, October 19, 2011*)
2. The accused was not acquitted nor was there a valid and legal dismissal or termination of the case;
3. Dismissal of the case was during the preliminary investigation;
4. It does not apply to administrative cases; and
5. Dismissal or termination of the case was with the express consent of the accused.

NOTE: When the dismissal is made at the instance of the accused, there is no double jeopardy (*People v. Quijada, 160 SCRA 516, July 24, 1996*).

GR: Double jeopardy is **not** available when the case is dismissed other than on the merits or other than by acquittal or conviction upon motion of the accused personally, or through counsel, since such dismissal is regarded as with express consent of the accused, who is therefore deemed to have waived the right to plea double jeopardy.

XPNS:

1. Dismissal based on insufficiency of evidence; (*Saldariega v. Panganiban, G.R. Nos. 211933 & 211960, April 15, 2015*)
 2. Dismissal because of denial of accused's right to speedy trial; and (*Ibid.*)
 3. Accused is discharged to be a State witness.
-
6. When the case was provisionally dismissed;
 7. The graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

NOTE: Doctrine of Supervening Event - The accused may still be prosecuted for another offense if a subsequent development changes the character of the first indictment under which he may have already been charged or convicted.

8. The facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information;
9. The plea of guilty to a lesser offense was made without the consent of the prosecutor and of the offended party except as otherwise provided in Sec. 1(f) of Rule 116.

Q: Hans, a writer in Q Magazine, published an article about Carlo's illicit affairs with other women. The magazine also happened to have a website where the same article was published. Carlo then filed a libel case against Hans both under the Revised Penal Code and the Cybercrime Law. Is there a violation of the proscription against double jeopardy?

A: YES. There should be no question that if the published material on print, said to be libelous, is again posted online or vice versa, that identical material cannot be the subject of two separate libels. The two offenses, one, a violation of Art. 353 of the Revised Penal Code and the other a violation of Sec. 4(c)(4) of R.A. 10175 involve essentially the same elements and are in fact one and the same offense. Online libel under Sec. 4(c)(4) is not a new crime but is one already punished under the Art. 353. Sec. 4(c)(4) merely establishes the computer system as another means of publication. Charging the offender under both laws would be a blatant violation of the proscription against double jeopardy (*Disini v. Secretary of Justice, G.R. No. 203335, February 11, 2014*).

Q: Jet was convicted for Reckless Imprudence Resulting in Slight Physical Injuries. Can he still be prosecuted for Reckless Imprudence Resulting in Homicide and Damage to Property arising from the same incident?

A: NO. The doctrine that reckless imprudence under Art. 365 is a single *quasi*-offense by itself and not merely a means to commit other crimes such that conviction or acquittal of such *quasi*-offense bars subsequent prosecution for the same *quasi*-offense, regardless of its various resulting acts. Reason and precedent both coincide in that once convicted or acquitted of a specific act of reckless imprudence, the accused may not be prosecuted again for that



same act. For the essence of the *quasi*-offense of criminal negligence under Art. 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty, it does not qualify the substance of the offense. And, as the careless act is single, whether the injurious result should affect one person or several persons, the offense (criminal negligence) remains one and the same, and cannot be split into different crimes and prosecutions (*Jason Ivler y Aguilar v. Hon. Modesto-San Pedro, G.R. No. 172716, November 17, 2010*).

A valid information is required in order for the first jeopardy to attach

When accused policemen entered their pleas of not guilty, and later arraigned anew by reason of amendment of information, and consequently convicted, they were not placed in double jeopardy. The first requirement for jeopardy to attach – that the information was valid – has not been complied with (*Herrera v. Sandiganbayan, G.R. Nos. 119660-61, February 13, 2009*).

NOTE: When the first case was dismissed due to insufficiency of evidence without giving the prosecution the opportunity to present its evidence, jeopardy has not yet attached (*People v. Dumlao, G.R. No. 168918, March 2, 2009*).

Q: After a long and protracted trial, the accused involved in the murder of then Senator Aquino were acquitted by the Sandiganbayan. After the EDSA People Power Revolution, a commission appointed by President Aquino recommended the re-opening of the Galman-Aquino murder case after finding out that the then authoritarian president Marcos ordered the Tanodbayan and Sandiganbayan to rig the trial. Marcos repudiated the findings of the very Fact Finding Board that he himself appointed to investigate the assassination of Ninoy Aquino; he totally disregarded the Board's majority and minority findings of fact and publicly insisted that the military's "fall guy" Rolando Galman was the killer of Ninoy Aquino; the Sandiganbayan's decision in effect convicted Rolando Galman as Ninoy's assassin notwithstanding that he was not on trial but the victim, and granted all 26 accused total absolution notwithstanding the Fact Finding Board declaring the soldiers' version of Galman being Aquino's killer a perjured story. Will the rule on double jeopardy apply?

A: NO. There was no double jeopardy. It is a settled doctrine that double jeopardy cannot be invoked against this Court's setting aside of the trial courts' judgment of dismissal or acquittal where the prosecution which represents the sovereign people in criminal cases is denied due process. The proceedings that took place before was a sham and a mock trial which resulted in the denial of the State's right to due process (*Galman v. Sandiganbayan, G.R. No. 72670, September 12, 1986*).

Effect of order of a court which lacks jurisdiction

Since the MTC did not have jurisdiction to take cognizance of the case pending this Court's review of the RTC Order, its order of dismissal was a total nullity and did not produce any legal effect. Thus, the dismissal neither terminated the action on the merits, nor amounted to an acquittal. The same can be said of the Order of Revival. Since both orders cannot be the source of any right nor create any obligation, the dismissal and the subsequent reinstatement of Criminal Case No. 89724 did not effectively place the petitioners in double jeopardy (*Quiambao v. People, G.R. No. 185267, September 17, 2014*).

The appeal of an accused operates as a waiver of his right against double jeopardy

When an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the appellant." In other words, when appellant appealed the RTC's judgment of conviction for murder, he is deemed to have abandoned his right to invoke the prohibition on double jeopardy since it became the duty of the appellate court to correct errors as may be found in the appealed judgment. Thus, appellant could not have been placed twice in jeopardy when the CA modified the ruling of the RTC by finding him guilty of robbery with homicide as charged in the Information instead of murder (*People v. Torres, G.R. No. 189850, September 22, 2014*).

MOTION FOR RECONSIDERATION AND APPEAL

Motion for Reconsideration

At any time before a judgment of conviction becomes final, the court may on motion of the accused, or on its own instance with the consent of the accused, grant a new trial or reconsideration



(Rule 121, Sec. 1 of the Revised Rules of Criminal Procedure).

NOTE: A motion for reconsideration is a motion generally filed by the accused whereby he seeks the modification of the conclusions of the court in the judgment of conviction on the basis of what is already on record. It does not call for the introduction of evidence unlike in new trial (*Pineda, The Revised Rules of Criminal Procedure, 2006 ed., 536-537*).

Appeal

Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy (*Rules of Criminal Procedure, Rule 122, Sec. 1*).

NOTE: The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG).

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.

In a special civil action for *certiorari* filed under Sec. 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant (*Bautista & Alcantara v. Cuneta-Pangilinan, G.R. No. 189754, October 24, 2012*).

DISMISSAL WITH CONSENT OF ACCUSED

Q: For failure of the principal witness, PO2 Nelson Villas to attend several hearings, the presiding judge of RTC Quezon City Branch 227, Judge Elvira Panganiban, ordered that the case against accused Roberta Saldariega for violation of Sections 5 and 11 of RA 9165 be provisionally dismissed, with the express consent of the

accused. However, on June 5, 2013, PO2 Villas moved to re-open the case, averring that his failure to attend was due to the successive deaths of his uncle and aunt, attaching thereto their respective death certificates. Judge Panganiban then granted the motion and ordered the cases set for hearing. Roberta countered that the provisional dismissal of the case with her consent but predicated on failure to prosecute which violates her right to speedy trial is equivalent to an acquittal, the reopening of which violates her right against double jeopardy. Is Roberta correct?

A: NO. The proscription against double jeopardy presupposes that an accused has been previously charged with an offense, and the case against him is terminated either by his acquittal or conviction, or dismissed in any other manner without his consent. As a general rule, the following requisites must be present for double jeopardy to attach: (1) a valid indictment, (2) before a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case against him without his express consent. However, there are two (2) exceptions to the foregoing rule, and double jeopardy may attach even if the dismissal of the case was with the consent of the accused: first, when there is insufficiency of evidence to support the charge against him; and second, where there has been an unreasonable delay in the proceedings, in violation of the accused's right to speedy trial.

In the instant case, while the first four requisites are present, the last requisite is lacking, considering that here the dismissal was merely provisional and it was done with the express consent of the accused-petitioner. Roberta is not in danger of being twice put in jeopardy with the reopening of the case against her as it is clear that the case was only provisionally dismissed by the trial court. The requirement that the dismissal of the case must be without the consent of the accused is not present in this case. Neither does the case fall under any of the aforementioned exceptions because, in fact, the prosecution had failed to continue the presentation of evidence due to the absence of the witnesses, thus, the fact of insufficiency of evidence cannot be established. Likewise, we find no unreasonable delay in the proceedings that would be tantamount to violation of the accused's right to speedy trial.

EX POST FACTO LAW AND BILL OF ATTAINDER

An *ex post facto* law is any law that makes an action, done before the passage of the law, and which was



innocent when done, criminal, and punishes such action (*United State v. Vicente Diaz Conde and Apolinaria R. De Conde*, G.R. No. L-18208, February 14, 1922). (1990 Bar)

Kinds of *ex post facto* law

It can be a law that:

1. Makes an act, which was innocent when done, criminal and punishes such action;
2. Aggravates a crime or makes it greater than when it was committed;
3. Changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed;
4. Alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant;
5. Assumes to regulate civil rights and remedies only. In effect imposes penalty or deprivation of a right for something which when done was lawful; and
6. Deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty (*Nuñez v. Sandiganbayan and People*, G.R. Nos. L-50581-50617, January 30, 1982).

Characteristics of *ex post facto* law

The *ex post facto* law must:

1. Refer to criminal matters;
2. Be retroactive in its application; and
3. To the prejudice of the accused.

Q: On Oct. 8, 1992 President Ramos issued A.O. No. 13 creating the Presidential AdHoc Fact-Finding Committee on Behest Loans. The Committee was tasked to inventory all behest loans and determine the courses of action that the government should take to recover these loans.

By Memorandum Order No. 61 dated Nov. 9, 1992, the functions of the Committee were expanded to include all non-performing loans which shall embrace behest and non-behest loans. Said Memorandum also named criteria to be utilized as a frame of reference in determining a behest loan.

Several loan accounts were referred to the Committee for investigation, including the loan transactions between PEMI and the DBP.

Consequently, Atty. Salvador, Consultant of the Fact-Finding Committee, and representing the PCGG, filed with the Ombudsman a sworn complaint for violation of Sections 3(e) and (g) of R.A. No. 3019 against the respondents Mapa, Jr. et. al. The Ombudsman dismissed the complaint on the ground of prescription.

According to the Ombudsman, the loans were entered into by virtue of public documents during the period of 1978 to 1981. Records show that the complaint was referred and filed with the Ombudsman on Oct. 4, 1996 or after the lapse of more than fifteen years from the violation of the law. Therefore, the offenses charged had already prescribed.

The Presidential Ad Hoc Committee on Behest Loans was created on Oct. 8, 1992 under Administrative Order No. 13. Subsequently, Memorandum Order No. 61, dated Nov. 9, 1992, was issued defining the criteria to be utilized as a frame of reference in determining behest loans.

Accordingly, if these Orders are to be considered the bases of charging respondents for alleged offenses committed, they become ex-post facto laws which are proscribed by the Constitution. The Committee filed a Motion for Reconsideration, but the Ombudsman denied it on July 27, 1998.

Are Administrative Order No. 13 and Memorandum Order No. 61 ex-post facto laws?

A: NO. The constitutional doctrine that outlaws an ex post facto law generally prohibits the retrospectivity of penal laws. Penal laws are those acts of the legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment. The subject administrative and memorandum orders clearly do not come within the shadow of this definition. Administrative Order No. 13 creates the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, and provides for its composition and functions. It does not mete out penalty for the act of granting behest loans. Memorandum Order No. 61 merely provides a frame of reference for determining behest loans. Not being penal laws, Administrative Order No. 13 and Memorandum Order No. 61 cannot be characterized as ex post facto laws. There is, therefore, no basis for the Ombudsman to rule that the subject administrative and memorandum orders are ex post



BILL OF RIGHTS

facto (*Salvador v. Mapa, Jr.*, G.R. No. 135080, November 28, 2007).

Bill of attainder

It is a legislative act that inflicts punishment without trial, its essence being the substitution of legislative fiat for a judicial determination of guilt (*People v. Ferrer*, G.R. Nos. L-32613-14, December 27, 1972).

NOTE: It is only when a statute applies either to named individuals or easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial that it becomes a bill of attainder.

Two kinds of bill of attainder

1. *Bill of attainder proper* (legislative imposition of the death penalty); and
2. *Bill of pains and penalties* (imposition of a lesser penalty)



CITIZENSHIP

Citizenship

It pertains to a membership in a political community, which is personal and more or less permanent in character.

Citizenship vs. Nationality

Citizenship	Nationality
A term denoting membership of a citizen in a political society, which membership implies, reciprocally, a duty of allegiance on the part of the member and duty of protection on the part of the state.	It has a broader meaning, embracing all who owe allegiance to a state, whether democratic or not, without thereby becoming citizens. Because they owe allegiance to it, they are not regarded as aliens.

WHO ARE FILIPINO CITIZENS

1. Those who are Filipino citizens at the time of the adoption of the 1987 Constitution:
2.
 - a. Those who are citizens under the Treaty of Paris;
 - b. Those declared citizens by judicial declaration applying the *jus soli* principle, before *Tio Tam v. Republic*, G.R. No. L-9602, April 25, 1957;
 - c. Those who are naturalized in accordance with law (*Act 2927*);
 - d. Those who are citizens under the 1935 Constitution; and
 - e. Those who are citizens under the 1973 Constitution.
3. Those whose fathers or mothers are Filipino citizens;
4. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

NOTE: Time to elect: within three years from reaching the age of majority.

5. Those naturalized in accordance with law (*Art. IV, Sec. 1, 1987 Constitution*).

Caram rule

Under the 1935 Constitution, those born in the Philippines of foreign parent, who before the

adoption of the Constitution had been elected to public office, are considered Filipino citizens (*Chiongbian v. de Leon*, G.R. No. L-2007, January 31, 1949).

NOTE: The 1935 Constitution, during which regime FPJ had seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate (*Tecson v. COMELEC*, G.R. No. 161434, March 3, 2004).

MODES OF ACQUIRING CITIZENSHIP

1. *By birth*
 - a. *Jus sanguinis* – It is the acquisition of citizenship on the basis of blood relationship. **(2015 Bar)**
 - b. *Jus soli* – It is the acquisition of citizenship on the basis of the place of birth.
2. *By naturalization* – It refers to the legal act of adopting an alien and clothing him with the privilege of a native-born citizen.
3. *By marriage* – When a foreign woman marries a Filipino husband, provided, she possesses all qualifications and none of the disqualifications for naturalization. **(2009 Bar)**

Citizenship of a Filipino woman who married a foreigner under the 1935, 1973, and 1987 Constitution

Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it (*Art. IV, Sec. 4, 1987 Constitution*). **(2014 Bar)**

A female citizen of the Philippines who marries an alien shall retain her Philippine citizenship, unless by her act or omission she is deemed, under the law, to have renounced her citizenship (*1973 Constitution*).

Philippine citizenship may be lost or reacquired in the manner provided by law (*1935 Constitution*).

In the case of a woman, Filipino citizenship may be lost upon her marriage to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality [*C.A. No. 63 Sec 1(7)*].

NOTE: *Jus sanguinis* and naturalization are the modes followed in the Philippines.

Statutory formalities in selecting Philippine citizenship



1. A statement of election under oath;
2. An oath of allegiance to the Constitution and Government of the Philippines; and
3. Registration of the statement of election and of the oath with the nearest civil registry (*Balgamelo Cabiling Ma v. Commissioner Alipio F. Fernandez, Jr., G.R. No. 183133, July 26, 2010*).

Registration of the act of election does not confer Filipino citizenship

It is not the registration of the act of election, although a valid requirement under Commonwealth Act No. 625, that will confer Philippine citizenship on the petitioners. It is only a means of confirming the fact that citizenship has been claimed. In other words, the actual exercise of Philippine citizenship for over half a century by the petitioners is actual notice to the Philippine public, which is equivalent to formal registration of the election of Philippine citizenship (*Ibid.*).

Registration of documents of election still allowed even beyond the time frame

It should be allowed if in the meanwhile positive acts of citizenship have been done publicly, consistently and continuously. These acts constitute constructive registration (*Ibid.*).

The failure to register the election of citizenship in the civil registry will not defeat the election and negate the permanent fact of having a Filipino mother

Having a Filipino mother is permanent. It is the basis of the right of the petitioners to elect Philippine citizenship (*Ibid.*).

NATURALIZATION AND DENATURALIZATION

Naturalization

An act of formally adopting a foreigner into the political body of a nation by clothing him or her with the privileges of a citizen.

Modes of becoming a citizen by naturalization

1. Administrative naturalization pursuant to R.A. 9139
2. Judicial naturalization pursuant to C.A. 473, as amended; and
3. Legislative naturalization in the form of a law enacted by Congress bestowing Philippine citizenship to an alien (*So v. Rep., G.R. No. 170603, January 29, 2007*).

Qualifications for Judicial Naturalization (CA No. 473)

1. Not less than 18 years of age on the date of hearing the petition (*as amended by R.A. 6809*).
2. Resided in the Philippines for not less than 10 years; may be reduced to 5 years, if;
 - a. Honorably held office under the Government of the Philippines or under that of any of the provinces, cities, municipalities, or political subdivisions thereof;
 - b. Established new industry or introduced a useful invention;
 - c. Married to a Filipino woman;
 - d. Engaged as teacher in Philippine public or private school not established for exclusive instruction of a particular nationality or race, or in any branches of education or industry for a period of not less than two years; and
 - e. Born in the Philippines.
3. Character;
 1. Good moral character
 2. Believes in the Constitution
 3. Conducted himself in an irreproachable conduct during his stay in the Philippines
4. Owns real estate in the Philippines not less than P5,000 in value; or has some lucrative trade, profession or lawful occupation that can support himself and his family;
5. Speaks and writes English or Filipino and any principal Philippine dialects (*as amended by Sec. 6 Art. XIV*); and
6. Enrolled minor children in any public or private school recognized by the government where Philippine history, government and civics are taught as part of the curriculum, during the entire period of residence prior to hearing of petition.

Disqualified from Judicial Naturalization (C.A. 473)

1. Persons opposed to organized government or affiliated with any association or group of persons which uphold and teach doctrines opposing all organized governments;
2. Persons defending or teaching necessity or propriety of violence, personal assault or assassination for the success or predominance of their ideas;
3. Polygamists or believers of polygamy;
4. Persons suffering from mental alienation or incurable contagious disease;



5. Persons convicted of crime involving moral turpitude;
6. Persons who, during residence in the Philippines, have not mingled socially with Filipinos, or did not evince sincere desire to learn and embrace customs, traditions and ideals of Filipinos;
7. Citizens or subjects of nations with whom the Philippines is at war, during the period of such war; and
8. Citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof (no reciprocity).

Q: Karbasi, of Iranian national, is a long-time resident of Fairview, Quezon City. However, the UN Commission for Refugees certified his status as a refugee. He now seeks to be a Filipino citizen through judicial naturalization. The OSG, on the other hand, opposes his petition on the ground that Iranian Law does not allow naturalization of Filipino citizens as Iranians; thus non-compliant with the Naturalization Law that there should be reciprocity between Philippine law and the foreign law. Is the OSG's opposition correct?

A: NO. True, the Naturalization Law disqualifies citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects. A perusal of Karbasi's petition, however, reveals that he has successfully established his refugee status upon arrival in the Philippines.

In effect, the country's obligations under its various international commitments come into operation. **Articles 6 and 34 of the 1951 Convention relating to the Status of Refugees**, to which the Philippines is a signatory, must be considered in this case. In the same vein, **Art. 7 of the said Convention expressly provides exemptions from reciprocity**, while **Art. 34** states the earnest obligation of contracting parties to "as far as possible facilitate the assimilation and naturalization of refugees." As applied to this case, Karbasi's status as a refugee has to end with the attainment of Filipino citizenship, in consonance with Philippine statutory requirements and international obligations. Indeed, the **Naturalization Law must be read in light of the developments in international human rights law specifically the granting of nationality to refugees and stateless persons** (*Republic v. Karbasi, G.R. No. 210412, July 29, 2015*).

Qualifications for Administrative Naturalization (R.A. 9139)

1. The applicant must be born in the Philippines and residing therein since birth;
2. The applicant must not be less than eighteen (18) years of age, at the time of filing of his/her petition;
3. The applicant must be of good moral character and believes in the underlying principles of the Constitution, and must have conducted himself/herself in a proper and irreproachable manner during his/her entire period of residence in the Philippines in his relation with the duly constituted government as well as with the community in which he/she is living;
4. The applicant must have received his/her primary and secondary education in any public school or private educational institution duly recognized by the Department of Education, Culture and Sports, where Philippine history, government and civics are taught and prescribed as part of the school curriculum and where enrollment is not limited to any race or nationality: *Provided*, That should he/she have minor children of school age, he/she must have enrolled them in similar schools;
5. The applicant must have a known trade, business, profession or lawful occupation, from which he/she derives income sufficient for his/her support and if he/she is married and/or has dependents, also that of his/her family: *Provided, however*, That this shall not apply to applicants who are college degree holders but are unable to practice their profession because they are disqualified to do so by reason of their citizenship;
6. The applicant must be able to read, write and speak Filipino or any of the dialects of the Philippines; and
7. The applicant must have mingled with the Filipinos and evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipino people.

Persons disqualified for Administrative naturalization (R.A. 9139)

1. Those opposed to organized government or affiliated with any association of group of persons who uphold and teach doctrines opposing all organized governments;
2. Those defending or teaching the necessity of or propriety of violence, personal



CITIZENSHIP

- assault or assassination for the success or predominance of their ideas;
3. Polygamists or believers in the practice of polygamy;
 4. Those convicted of crimes involving moral turpitude;
 5. Those suffering from mental alienation or incurable contagious diseases;
 6. Those who, during the period of their residence in the Philippines, have not mingled socially with Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos;
 7. Citizens or subjects with whom the Philippines is at war, during the period of such war; and
 8. Citizens or subjects of a foreign country whose laws do not grant Filipinos the right to be naturalized citizens or subjects thereof.

C.A. 473 vs. R.A. 9139

C.A. 473	R.A. 9139
Judicial act	Administrative act
Covers all aliens regardless of class.	Applies only to aliens who were born in the Philippines and have been residing here.
	Less tedious, less technical and more encouraging.
	An alien who is not qualified under R.A. No. 9139 may still be naturalized under C.A. No. 473.

(So v. Republic, G.R. No. 170603, January 29, 2007)

Procedure under C.A. 473

1. Declaration of intention;

NOTE: Must be done one year prior to the filing of petition for admission to Philippine Citizenship

2. Petition for citizenship;
3. Notification and appearance;

NOTE: Publication of such petition in the Official Gazette and in one of the newspapers of

general circulation in the province where the petitioner resides

4. Hearing of the petition;
5. Issuance of the Certificate of Naturalization;

NOTE: The petitioner shall also take an oath before the naturalization certificate is issued.

6. Record books; and
7. Charging of fees

Procedure under RA 9139

1. Petition for citizenship;
2. Special Committee on Naturalization;
3. Approval or Disapproval of the petition;
4. Decree of naturalization; and
5. Charging of fees

Direct vs. Derivative Naturalization

DIRECT NATURALIZATION	DERIVATIVE NATURALIZATION
Is effected:	Is conferred:
<ol style="list-style-type: none"> 1. By individual proceedings, usually judicial, under general naturalization laws; 2. By specific act of the legislature, often in favor of distinguished foreigners who have rendered some notable service to the local state; 3. By collective change of nationality (naturalization en masse) as a result of cession or subjugation; and 4. In some cases, by adoption of orphan minors as nationals of the State where they are born. 	<ol style="list-style-type: none"> 1. On the wife of the naturalized husband; 2. On the minor children of the naturalized parent; 3. On the alien woman upon marriage to a national; and 4. The unmarried child whether legitimate, illegitimate or adopted, below 18 years of age, of those who re-acquire Philippine citizenship upon effectivity of R.A. 9225 shall be deemed citizens of the Philippines. <p>(2009 Bar)</p>

NOTE: Derivative naturalization does not always follow as a matter of course, for it is usually made subject to stringent restrictions and conditions. Our own laws, for instance, provide that an alien woman



married to a Filipino shall acquire his citizenship only if she herself might be lawfully naturalized.

Effects of naturalization

ON THE WIFE	
Vests citizenship on the wife who might herself be lawfully naturalized; She need not prove her qualifications but only that she is not disqualified. (<i>Moy Ya Lim Yao v. Comm. of Immigration</i> , G.R. No. L-21289, October 4, 1971)	
ON THE MINOR CHILDREN	
Born in the Philippines	
Automatically becomes a citizen.	
Born Abroad	
Before the naturalization of the father	
<i>If residing in the Phil. At the time of naturalization</i>	Automatically becomes a citizen.
<i>If not residing in the Phil. At the time of naturalization</i>	GR: Considered citizen only during minority. XPN: He begins to reside permanently in the Philippines.
After parents' naturalization	
Considered Filipino, <i>provided</i> registered as such before any Philippine consulate within one year after attaining majority age and takes oath of allegiance.	

Q: Huang Te Fu alias Robert Uy, is a Taiwanese businessman who is married to a Filipina, and his family's business is engaged in zipper manufacturing. He sought to be naturalized. Before the RTC of QC, he proved that he resided in the Philippines continuously for 23 years; obtained primary, secondary, and tertiary education in Philippine schools; and derived a Php15,000 monthly income from his family's zipper manufacturing business as an employee.

The OSG opposed his petition alleging that Robert Uy does not possess a lucrative trade or profession; is not included in the payroll of the zipper business of which he claims to be an employee; does not have sufficient monthly income; and falsely misrepresented himself as a Filipino in a Deed of Sale of a land in Antipolo City; and that his 2002, 2003, and 2004 income tax returns reveal that his monthly income differs from his monthly income as declared in his petition for naturalization. Should Robert Uy's petition for naturalization be granted?

A: NO. In naturalization cases, when full and complete compliance with the requirements of the Revised Naturalization Law, or Commonwealth Act No. 473 (C.A. 473), is not shown, a petition for naturalization must be denied.

Huang Te Fu is not engaged in a lucrative trade. By his own admission, most of his family's daily expenses are still shouldered by his parents who own the zipper manufacturing business which employs him. This simply means that he continues to be a burden to, and a charge upon, his parents; he lives on the charity of his parents.

Moreover, Huang Te Fu's admitted false declaration under oath contained in the August 2001 deed of sale that he is a Filipino citizen – which he did to secure the seamless registration of the property in the name of his wife – is further proof of his lack of good moral character. It is also a violation of the constitutional prohibition on ownership of lands by foreign individuals. (*Republic v. Huang Te Fu*, G.R. No. 200983, March 18, 2015)

Denaturalization

The process taken by a government to revoke the citizenship status of an individual.

Grounds for denaturalization

1. Naturalization certificate obtained fraudulently or illegally;
2. If, within five years, he returns to his native country or to some foreign country and establishes residence therein;
3. Naturalization obtained through invalid declaration of intention;
4. Minor children failed to graduate through the fault of parents either by neglecting support or by transferring them to another school; and
5. Allowing himself to be used as a dummy.

Effects of denaturalization



1. If ground affects intrinsic validity of proceedings, denaturalization shall divest wife and children of their derivative naturalization; and
2. If the ground is personal; the wife and children shall retain citizenship.

DUAL CITIZENSHIP AND DUAL ALLEGIANCE

Dual citizenship vs. Dual allegiance (2009 Bar)

DUAL CITIZENSHIP	DUAL ALLEGIANCE
Arises when, as a result of concurrent application of the different laws of two or more States, a person is simultaneously considered a citizen of said states.	Refers to the situation where a person simultaneously owes, by some positive act, loyalty to two or more States.
Involuntary and allowed.	Result of an individual's volition and is prohibited by the Constitution.

NOTE: In Sec. 5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens *per se* but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase "dual citizenship" in R.A. No. 7160, sec. 40(d) and in R.A. No. 7854, Sec. 20 must be understood as referring to "dual allegiance."

Consequently, persons with mere dual citizenship do not fall under this disqualification. Unlike those with dual allegiance, who must, therefore, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states (*Mercado v. Manzano, G.R. No. 135083, May 26, 1999*).

LOSS AND RE-ACQUISITION OF PHILIPPINE CITIZENSHIP

Grounds for loss of Philippine citizenship

1. Naturalization in a foreign country; or (1992, 2004 Bar)

2. Express renunciation of citizenship (expatriation); or

NOTE: The mere application or possession of an alien certificate of registration does not amount to renunciation (*Mercado v. Manzano, G.R. No. 135083, May 26, 1999*).

3. Subscribing to an oath of allegiance to the constitution or laws of a foreign country upon attaining 21 years of age; or

NOTE: Citizens may not divest citizenship when the Philippines is at war.

4. Rendering service to or accepting commission in the armed forces of a foreign country; or

NOTE: It shall not divest a Filipino of his citizenship if:

- a. The Philippines has a defensive and/or offensive pact of alliance with the said foreign country;
- b. The said foreign country maintains armed forces in the Philippine territory with its consent provided that at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto, states that he does so only in connection with its service to said foreign country.

5. Cancellation of certificate of naturalization (Denaturalization); or
6. Having been declared by final judgment a deserter of the armed forces of the Philippines in times of war; or
7. In case of a woman, upon her marriage, to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

NOTE: Citizenship is renounced expressly. (*Ibid.*)

Application of res judicata in citizenship cases

GR: *Res judicata* does not set in citizenship cases.

XPNS:

1. Person's citizenship is resolved by a court or an administrative body as a



material issue in the controversy, after a full-blown hearing;

2. With the active participation of the Solicitor General or his representative; and
3. Finding of his citizenship is affirmed by the Supreme Court (*Burca v. Republic G.R. No. L-24252, January 30, 1967*).

Ways to reacquire citizenship

1. Naturalization;
2. Repatriation; and
3. Direct act of Congress.

Naturalization vs. Repatriation

NATURALIZATION	REPATRIATION
<i>Nature</i>	
A mode of acquisition and reacquisition of Philippine citizenship.	Mode of reacquisition of Philippine Citizenship.
<i>As to process</i>	
Very cumbersome and tedious.	Simpler process.

Repatriation

It refers to the recovery of the original nationality. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino (*Bengzon v. HRET and Cruz, G.R. No. 142840, May 7, 2001*).

NOTE: Repatriation shall be effected by:

1. Taking the necessary oath of allegiance to the Republic of the Philippines; and
2. Registration in the proper civil registry and in the Bureau of Immigration.

The Bureau of Immigration shall thereupon cancel the pertinent alien certificate of registration and issue the certificate of identification as Filipino citizen to the repatriated citizen.

Categories of Natural-Born Filipinos under R.A. 9225 (Citizenship Retention and Re-acquisition Act of 2003) (2000, 2002, 2003 Bar)

1. **Reacquisition** - Natural-born citizens of the Philippines who have lost their Filipino citizenship due to naturalization as citizens of a foreign country are deemed to have **re-acquired** Philippine citizenship; and
2. **Retention** - Natural-born citizens of the Philippines who, *after* the effectivity of said RA, become citizens of a foreign country shall **retain** their Philippine citizenship (R.A. 9225, Sec. 3; *David v. Agbay, G.R. No. 199113, March 18, 2015*).

Condition for the enjoyment of full civil and political rights

Those who retain or re-acquire Philippine citizenship shall enjoy full civil and political rights subject to the following conditions:

1. *Right to vote:* He/she must meet the requirements of Sec. 1, Art. V of the Constitution, and of R.A. No. 9189 (The Overseas Absentee Voting Act of 2003) and other existing laws;
2. *Elective Public Office:*
 - i. Possess qualification for holding such public office as required by the Constitution and existing laws;
 - ii. Make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath, at the time of the filing of the certificate of candidacy; and
 - iii. *Appointive Public Office* - subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath;

NOTE: That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

- a. Are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or
- b. Are in active service as commissioned or non-



commissioned officers in the armed forces of the country which they are naturalized citizens. (R.A. 9225)

- iv. *Practice of profession:* He/she apply with the proper authority for a license or permit to engage in such practice (R.A. 9225).

Q: Can a legitimate child born under the 1935 Constitution of a Filipino mother and an alien father validly elect Philippine Citizenship fourteen (14) years after he has reached the age of majority?

A: NO. The election should be made within a "reasonable time" after attaining the age of majority. The phrase "reasonable time" has been interpreted to mean that the election should be made within three years from reaching the age of majority (*Re: Application for Admission to the Philippine Bar v. Vicente Ching, B.M. No. 914, October 1, 1999*).

NATURAL-BORN CITIZENS AND PUBLIC OFFICE

1. Citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship;
2. Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority.

NOTE: The term "natural-born citizens", includes "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship" (*Tecson v. COMELEC, G.R. No. 161434, March 3, 2004*).

Rule regarding marriage of a Filipino to an alien

GR: The Filipino retains Philippine citizenship.

XPN: If, by their act or omission they are deemed, under the law, to have renounced it (*1987 Constitution, Sec. 4, Art. IV*).

Government officials required to be natural-born Filipino citizens

1. President; (*Sec.2, Art VII*)
2. Vice-President; (*Sec. 3, Art VII*)
3. Members of Congress; (*Secs. 3 and 6, Art VI*)
4. Justices of Supreme Court and lower collegiate courts; (*Sec. 7(1), Art VIII*)

5. Ombudsman and his deputies; (*Sec. 8, Art XI*)
6. Members of Constitutional Commissions;
7. Members of the Central Monetary Authority; (*Sec. 20, Art XII*)
8. Members of the Commission on Human Rights (*Sec 17 (2), Art XIII*).

NOTE: The fact that a person has dual citizenship does not disqualify him from running for public office (*Cordora v. COMELEC, G.R. No. 176947, February 19, 2009*).

Oath of Allegiance and Renunciation of Foreign Citizenship

Sec. 5(2) of R.A. 9225 (on the making of a personal and sworn renunciation of any and all foreign citizenship) requires the Filipinos availing themselves of the benefits under the said Act to accomplish an undertaking other than that which they have presumably complied with under Sec. 3 thereof (oath of allegiance to the Republic of the Philippines). There is little doubt, therefore, that the intent of the legislators was not only for Filipinos reacquiring or retaining their Philippine citizenship under R.A. 9225 to take their oath of allegiance to the Republic of the Philippines, but also to explicitly renounce their foreign citizenship if they wish to run for elective posts in the Philippines. To qualify as a candidate in Philippine elections, Filipinos must only have one citizenship, namely, Philippine citizenship.

The oath of allegiance contained in the Certificate of Candidacy, does not constitute the personal and sworn renunciation sought under Sec. 5(2) of R.A. 9225. It bears to emphasize that the said *oath of allegiance* is a general requirement for all those who wish to run as candidates in Philippine elections; while the *renunciation of foreign citizenship* is an additional requisite only for those who have retained or reacquired Philippine citizenship under R.A. No. 9225 and who seek elective public posts, considering their special circumstance of having more than one citizenship (*Jacot v. Dal, G.R. No. 179848, November 27, 2008*).

Q: Apapaum is a naturalized citizen of another country who reacquires Filipino citizenship. On the other hand, Joeberg possesses dual citizenship by birth. If they desire to run for elective public office, what requirement must they comply as regards their citizenship?

A: Apapaum must comply with the requirements set in RA 9225. Sec 5(3) of RA 9225 states that naturalized citizens who reacquire Filipino



citizenship and desire to run for public office shall "...make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Sec. 3 of R.A. 9225.

A natural-born Filipino who did not subsequently become a naturalized citizen of another country on the other hand, need not comply with the twin requirements of swearing an oath of allegiance and executing a renunciation of foreign citizenship. It is sufficed, if upon the filing of his certificate of candidacy, he elects Philippine citizenship to terminate his status as person with dual citizenship considering that his condition in the unavoidable consequence of conflicting laws of different States (*Cordora v. COMELEC*, G.R. No. 176947, February 19, 2009).

The filing by a person with dual citizenship of a certificate of candidacy, containing an oath of allegiance is not considered as a renunciation of his foreign citizenship under R.A. 9225

The filing of a certificate of candidacy does not *ipso facto* amount to a renunciation of his foreign citizenship because R.A. No. 9225 provides for more requirements. It requires the twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship (*Roseller De Guzman v. COMELEC*, G.R. No. 180048, June 19, 2009).

Renunciation of foreign citizenship required by R.A. 9225

By renouncing foreign citizenship, one is deemed to be solely a Filipino citizen, regardless of the effect of such renunciation under the laws of the foreign country. However, this legal presumption does not operate permanently and is open to attack when, after renouncing the foreign citizenship, the citizen performs positive acts showing his continued possession of a foreign citizenship.

The renunciation of foreign citizenship is not a hollow oath that can simply be professed at any time, only to be violated the next day. **It requires an absolute and perpetual renunciation of the foreign citizenship and a full divestment of all civil and political rights granted by the foreign country which granted the citizenship** (*Maquiling v. COMELEC*, G.R. No. 195649, April 16, 2013).

Strict adherence to the *Maquiling* doctrine

The ruling in *Maquiling* is indeed novel. Use of a foreign passport amounts to repudiation or

recantation of the oath of renunciation. Yet, despite the issue being novel and of first impression, the Court in *Maquiling* did not act with leniency or benevolence towards Arnado. Voting 10-5, the Court ruled that matters dealing with qualifications for public elective office must be strictly complied with. Otherwise stated, the Court in *Maquiling* did not consider the novelty of the issue as to excuse Arnado from strictly complying with the eligibility requirements to run for public office or to simply allow him to correct the deficiency in his qualification by submitting another oath of renunciation. Thus, it is with more reason that we should similarly require strict compliance with the qualifications to run for local elective office (*Arnado v. COMELEC*, G.R. No. 210164, August 18, 2015).

TREATMENT OF FOUNDLINGS

Foundlings are considered as natural born citizens of the country where he is found

As a matter of law, foundlings are, as a class, natural-born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either.

All three Constitutions guarantee the basic right to equal protection of the laws. All exhort the State to render social justice. Of special consideration is Art. XV, Sec. 3 which requires the State to defend the "right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."

Under Art. IV, Sect. 2, "Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship." In the first place, "having to perform an act" means that the act must be personally done by the citizen. In this instance, the determination of foundling status is done not by the child but by the authorities.

Foundlings are likewise citizens under international law. Under the 1987 Constitution, an international law can become part of the sphere of domestic law either by transformation or incorporation.

The common thread of the UDHR, UNCRC, and ICCPR is to obligate the Philippines to grant nationality from birth and ensure that no child is stateless. This grant of nationality must be at the time of birth, and it cannot be accomplished by the application of our present naturalization laws, C.A. No. 473, as amended, and R.A. No. 9139, both of



which require the applicant to be at least 18 years old.

The principles found in two conventions, while yet unratified by the Philippines, are generally accepted principles of international law. The first is Art. 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws under which a foundling is presumed to have the "nationality of the country of birth." The second is the principle that a foundling is presumed born of citizens of the country where he is found, contained in Art. 2 of the 1961 United Nations Convention on the Reduction of Statelessness (*Poe-Llamanzares v. COMELEC*, GR No. 221697, March 8, 2016).



LOCAL GOVERNMENTS

Local Government Unit (LGU)

A political subdivision of the State which is constituted by law and possessed of substantial control over its own affairs. Remaining to be an intra-sovereign subdivision of one sovereign nation, but not intended, however, to be an *imperium in imperio* (empire within empire), the local government unit is autonomous in the sense that it is given more powers, authority, responsibility and resources (*Alvarez v. Guingona, G.R. No. 118303, January 31, 12996*).

An LGU is a public office, a public corporation, and is classified as a municipal corporation proper (*Agra, A.C. Amicus Imperiorum Locorum, 2016*).

Local governments vs. National government

Local governments are administrative agencies and agencies of Government distinguished from the National Government, which refers to the entire machinery of the central government. (*Agra, A.C. Amicus Imperiorum Locorum, 2016*)

Kinds of LGUs

1. *Provinces* – A political and territorial corporate body consisting of several municipalities and cities.
2. *Cities* – Consist of more urbanized and developed *barangays*.
 - a. *Highly urbanized cities* – Determined by law.
 - b. Cities not raised to highly urbanized category but their charters prohibit their voters from voting in provincial elections.
 - c. *Component cities* – Still under the province in some way.
3. *Municipalities* – Consist of groups of *barangays*, including municipal districts.
4. *Barangays* – Basic political and territorial self-governing body corporate and is subordinate to the municipality or city of which it forms part.
5. *Autonomous Regions* – A political and territorial subdivision that has a certain degree of freedom from the national government.

PUBLIC CORPORATIONS

It is one created by the State, either by general or special act for purposes of administration of local government, or rendering service for the public interest.

Criterion to determine whether a corporation is a public corporation

It is the relationship of the corporation to the state. If it was created by the State as its own agency to help it in carrying out its governmental functions, it is public. Otherwise, it is private.

Dual characteristic of public corporation

1. *Public or governmental* - It acts as an agent of the State as the government of the territory it occupies and its inhabitants within the municipal limits. The municipal corporation exercises, by delegation, a part of the sovereignty of the state.
2. *Private or proprietary* - It acts as an agent of the community in the administration of local affairs which is wholly beyond the sphere of public purposes, for which its governmental powers are conferred. It acts as separate entity for its own purposes, and not as a subdivision of the State.

NOTE: Not all corporations, which are not government owned or controlled, are *ipso facto* to be considered private corporations. These corporations are treated by law as agencies or instrumentalities of the government which are **not subject to the tests of ownership or control and economic viability** but to different criteria relating to their public purposes/interests or constitutional policies and objectives and their administrative relationship to the government or any of its Departments or Offices.

The economic viability test would only apply in cases wherein the corporation is engaged in some economic activity or business function for the government (*Boy Scouts of the Philippines v. COA, G.R. No. 177131, June 7, 2011*).

Public Corporation vs. Municipal Corporation

An LGU is a public office, a public corporation, and is classified as a municipal corporation proper. (*Agra, A.C. Amicus Imperiorum Locorum, 2016*)

Municipal corporations in the Philippines are mere creatures of Congress. As such, said corporations have only such powers as the legislative department may have deemed fit to grant them (*Santos Lumber Company, et. al. v. City of Cebu, et. al., G.R. No. No. L-10196, January 22, 1958*)

Two kinds of duties are imposed on municipal corporations, the one governmental and a branch of the general administration of the state, the other quasi-private or corporate; and that in the exercise of the latter duties the municipality is liable for the acts of its officers and agents, while in the former it is not



LOCAL GOVERNMENTS

(Cullen, J., in *Lefrois v. Co. of Monroe*, 162 N.Y., 563, 567)
(*Marcos Mendoza v. Francisco*, G.R. No. L-9596, February 11, 1916).

DISTINGUISHED FROM GOCC

Government owned and controlled corporations (GOCC)

Any agency organized as a stock or non-stock corporation, vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock [R.A. 10149, *GOCC Governance Act of 2011*, Chapter 1, Sec. 3 (o)].

NOTE: Provided that such agencies are further categorized by Department of Budget, CSC, and COA for purposes of the exercise and discharge of their respective powers, functions and responsibilities [E.O. No. 292, *Administrative Code of 1987*, Sec. 2 (13)].

Elements of a GOCC

1. Any agency organized as a stock or non-stock corporation
2. Vested with functions relating to public needs whether governmental or proprietary in nature
3. Owned by the government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) of its capital stock (*Leyson, Jr. v. Office of the Ombudsman*, G.R. No. 134990, April 27, 2000).

Public corporation vs. GOCC

Basis	Public Corporation	GOCC
As to Purpose	Administration of local government or rendering service for the public interest.	Performance of functions relating to public needs, whether Governmental or Proprietary in nature.

As to Who Creates	Created by the state, either by general act or special act.	Created by Congress or by incorporators.
As to How Created	Through legislation.	1) Original charters or special laws; or 2) General corporation law, as a stock or non-stock

CLASSIFICATIONS

Kinds of corporations

1. *Public corporation* - one that is created by the State either by general or special act for purposes of administration of local government or the rendering of service in the public interest.
2. *Private corporation* - it is formed for some private purpose, benefit, aim or end.

Kinds of public corporations

1. *Quasi-public corporations* *Quasi-public corporations* - Private corporations that render public service, supply public wants, or pursue other eleemosynary objectives. While purposely organized for the gain or benefit of its members, they are required by law to discharge functions for the public benefit. It must be stressed that a quasi-public corporation is a specie of private corporation, but the qualifying factor is the type of service the former renders to the public: if it performs a public service, then it becomes a quasi-public corporation (*Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*, G.R. No. 169752, September 25, 2007).

Government-owned and-controlled corporations are quasi-corporations owned by the government and organized as stock or non-stock corporation which function is that of a public character.

2. *Municipal corporations*- A political and corporate body constituted by the incorporation of inhabitants for the purpose of local government. It is established by law, partly as an agency of the State to assist in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated.

3. *Quasi-municipal corporations* - public corporations created by local governments.



MUNICIPAL CORPORATIONS

Essential elements of a municipal corporation

1. Legal creation or incorporation;
2. Corporate name;

NOTE: The *Sangguniang Panlalawigan* may, in consultation with the Philippine Historical Commission, change the name of component cities and municipalities, upon the recommendation of the *sanggunian* concerned (*Local Government Code, Sec. 13*).

3. Inhabitants; and
4. Territory

Nature of a municipal corporation

Every LGU created or recognized under the LGC is a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it shall exercise powers as a political subdivision of the National Government and as a corporate entity representing the inhabitants of its territory (*Local Government Code, Sec. 15*).

Dual function of Municipal Corporation

1. *Public or governmental* - It acts as an agent of the State or the government of the territory it occupies and its inhabitants. Examples are:
 - a. Delivery of sand and gravel for the construction of a municipal bridge (*Municipality of San Fernando v. Firme, G.R. No. L-52179, April 8, 1901.*)
 - b. The collection and disposal of garbage as conserving the public health is governmental in nature (*Department of Public Services Labor Unions v. CIR, G.R. No. L-15458, January 28, 1961.*)
2. *Private or proprietary* - It acts as an agent of the community in the administration of local affairs. As such, it acts as a separate entity acting for its own purposes, and not as a subdivision of the State (*Bara Lidasan v. COMELEC, G.R. No. L-28089, October 25, 1967.*)

Examples are:

- a. Maintenance of cemeteries (*City of Manila v. IAC, G.R. No. 71159, November 15, 1989.*)
- b. The renting of a city of its private property (*Chamber of Filipino Retailers v. Villegas, G.R. No. L-29819, April 14, 1972.*)

Q: The plaintiffs are creditors of the City of Manila as it existed during the Spanish colonial rule. As the Philippine Islands was ceded to the United States, the old City of Manila was

reincorporated during the American regime. An action was brought against the City of Manila upon the theory that the city, under its present charter from the government of the Philippine Islands, is the same juristic person as it existed during the Spanish rule and liable upon the obligations of the old city. Is the present municipality liable for the civil obligations of the city incurred prior to the cession to the United States?

A: YES. While military occupation or territorial cession may work a suspension of the governmental functions of municipal corporations, such occupation or cession does not result in their dissolution. The legal entity of the City of Manila survived both its military occupation by, and its cession to, the United States, and, as in law, the present city, as the successor of the former city, is entitled to the property rights of its predecessor, it is also subject to its liabilities. The present city is in every legal sense the successor of the old. The argument that by the change in the sovereignty the old city was extinguished in the same manner that the agency dies upon the death of the principal, loses sight of the dual character of municipal corporations, government and corporate. Only such governmental functions as are incompatible with the present sovereignty may be considered suspended. The juristic identity of the corporation is not affected by the change of sovereignty. The City of Manila is liable to its creditors (*Vilas v. City of Manila, G.R. Nos. 53-54 and 207, April 3, 1911.*)

Q: Vivencio died and was buried on a lot at the North Cemetery leased by the City of Manila to Irene, wife of Vivencio. Aside from a payment receipt, no other document was executed to embody such lease over the burial lot in question. On the basis of such certification, the authorities of the North Cemetery then authorized the exhumation and removal from subject burial lot the remains of the late Vivencio, placed the bones and skull in a bag or sack and kept the same in the depository or bodega of the cemetery. Aggrieved by the acts of the authorities, Irene filed an action for damages against the City of Manila. The City of Manila alleged that the North Cemetery is exclusively devoted for public use or purpose and since the City is a political subdivision in the performance of its governmental function, it is immune from tort liability, which may be caused by its public officers and subordinate employees. Is the City of Manila liable for damages?

A: YES. The City of Manila's powers are twofold in character - public, governmental or political on the one hand, and corporate, private and proprietary on the other. Governmental powers are those exercised



in administering the powers of the state and promoting the public welfare and they include the legislative, judicial, public and political. Municipal powers on the one hand are exercised for the special benefit and advantage of the community and include those which are ministerial, private and corporate. The North Cemetery is a patrimonial property of the City of Manila over which the latter exercises acts of dominion. The North Cemetery is within the class of property, which the City of Manila owns in its proprietary or private character. Therefore, the City of Manila is liable for the tortious act committed by its agents who failed to verify and check the duration of the contract of lease over the burial lot. Obligations arising from contracts have the force of law between the contracting parties. Thus a lease contract executed by the lessor and lessee remains as the law between them. Therefore, a breach of contractual provision entitles the other party to damages. (*City of Manila v. IAC*, G.R. No. 71159, November 15, 1989).

In the exercise of corporate, non-governmental functions, municipal governments stand on the same level as the National Government

The constitutional provision limiting the authority of the President over local governments to general supervision is unqualified and applies to all constitutional powers of the President as regards the corporate functions of local governments, inasmuch as the Executive never had any control over said functions. The same powers are not under the control even of Congress, for, in the exercise of corporate, non-governmental or non-political functions, municipal corporations stand practically on the same level as the National Government or the State as private corporations (*Hebron v. Reyes*, G.R. No. L-9124, July 28, 1958).

Types of municipal corporations

1. *De jure municipal corporations*- Created or recognized by operation of law.
2. *Municipal corporations by prescription* - Exercised their powers from time immemorial with a charter, which is presumed to have been lost or destroyed.
3. *De facto municipal corporations* - One existing under a color of authority which may be a valid law enacted by the legislature or an unconstitutional law, valid on its face, which has either (a) been upheld for a time by the courts or (b) not yet been declared void; *provided* that a warrant for its creation can be found in some other valid law or in the recognition of its potential existence by the general laws or constitution of the state (*The Municipality of Malabang, Lanao Del Sur v. Benito*, G.R. No. L-28113, March 28, 1969).

It is a corporation, which exercised their powers from time immemorial with a charter which by lapse of time is presumed as either lost or destroyed. It is where the people have, for years, been imposing and collecting revenues and exercising governmental powers.

Essential requisites of *de facto* corporation (VACA)

1. Valid law authorizing incorporation
2. Attempt in good faith to organize under it
3. Colorable compliance with law
4. Assumption of corporate powers

NOTE: Inquiries about the legal existence of a *de facto* corporation is reserved to the State in a proceeding for *quo warranto* or other direct proceeding. Where it is neither a corporation *de jure* nor *de facto*, but a nullity, the rule is that its existence may be, questioned collaterally or directly in any action or proceeding by anyone whose rights or interests are affected thereby, including the citizens of the territory incorporated unless they are estopped by their conduct from doing so (*Mun. of Malabang, Lanao del Sur v. Benito*, G.R. No. L-28113, March 28, 1969).

NOTE:

I. The color of authority required for the organization of a *de facto* municipal corporation may be:

1. A valid law enacted by the legislature.
2. An unconstitutional law, valid on its face, which has either:
 - a. Been upheld for a time by the courts; or
 - b. Not yet been declared void; *provided* that a warrant for its creation can be found in some other valid law or in the recognition of its potential existence by the general laws or constitution of the state.

II. There can be no *de facto* municipal corporation unless either directly or potentially, such a *de jure* corporation is authorized by some legislative fiat.

III. There can be no color of authority in an unconstitutional statute alone, the invalidity of which is apparent on its face.

IV. There can be no *de facto* corporation created to take the place of an existing *de jure* corporation, as such organization would clearly be a usurper (*Municipality of Malabang v. Benito*, G.R. No. L-28113, March 28, 1968).

4. *Municipal corporation by estoppel* - A corporation which is so defectively formed as not to be a *de facto*



corporation but is considered a corporation in relation to someone who dealt with it and acquiesced in its exercise of its corporate functions or entered into a contract with it (*Martin, Public Corporation, 1985 ed., p. 20*) (BAR 2010).

Q: President Garcia issued EO 353 creating the municipal district of San Andres, Quezon, by segregating from the municipality of San Narciso 6 barrios and their respective sitios. By virtue of EO. 174, issued by President Macapagal, the municipal district of San Andres was later officially recognized to have gained the status of a fifth class municipality.

The Municipality of San Narciso filed a petition for *quo warranto* with the RTC against the officials of the Municipality of San Andres seeking the declaration of nullity of EO 353. The municipality contended that EO 353, a presidential act, was a clear usurpation of the inherent powers of the legislature and in violation of the constitutional principle of separation of powers. However, the Municipality of San Andres contended that the case had become moot and academic with the enactment of Sec. 442 (d) of the LGC which provides for the continued existence of municipalities created by executive orders. Is the Municipality of San Narciso correct?

A: NO. EO 353 was issued in 1959 but it was only after 30 years that the Municipality of San Narciso finally decided to challenge the legality of the EO. Created in 1959, the Municipality had been in existence for 6 years when the Court decided the case of *Pelaez v. Auditor General* which declared void *ab initio* several EOs creating 33 municipalities in Mindanao. The ruling could have sounded the call for a similar declaration of the unconstitutionality of EO 353 but it was not to be the case. Granting that EO 353 was a complete nullity for being result of an unconstitutional delegation of legislative power, the Municipality of San Andres created by the EO attained the status of a *de facto* municipal corporation. Certain governmental acts all pointed to the State's recognition of the continued existence of the municipality, *i.e.*, it being classified as a fifth class municipality, the municipality had been covered by the 10th Municipal Circuit Court and its inclusion in the Ordinance appended to the 1987 Constitution. Equally significant is Section 442(d) of the Local Government Code to the effect that municipal districts organized pursuant to presidential issuances or executive orders and which have their respective sets of elective municipal officials holding office at the time of the effectivity of the Code shall henceforth be considered as regular municipalities. The power to create political subdivisions is a function of the

legislature. Congress did just that when it incorporated Sec. 442 (d) in the LGC. Curative laws are validly accepted in this jurisdiction, subject to the usual qualification against impairment of vested rights. All considered, the *de jure* status of the Municipality of San Andres in the province of Quezon must now be conceded (*Municipality Of San Narciso v. Mendez, G.R. No. 103702, December 6, 1994*).

Q: President Macapagal issued several executive orders creating 33 municipalities in Mindanao, one of which is the Andong in Lanao Del Sur. He justified the creation of such municipalities under Sec. 68 of the Revised Administrative Code. However, in the case of *Pelaez v. Auditor General*, the Court held that these EOs were null and void because Sec. 68 did not meet the requirements for a valid delegation of legislative power to the executive branch. Among the annulled EOs was the one creating the Municipality of Andong. Petitioner Camid is a resident of Andong and claims that despite the ruling in *Pelaez*, Andong remains in existence citing the case of *Municipality of San Narciso* where the Court affirmed the status of the Municipality of San Andres as a *de facto* municipal corporation and citing Sec. 442 (d) of the LGC recognizing municipal corporations created by executive order. Is Camid correct?

A: NO. The case of *Municipality of San Narciso* is different from the case of Andong. Unlike in *San Narciso*, the Executive Order creating Andong was judicially declared null and void *ab initio* by the Court in the case of *Pelaez*. Andong also does not meet the requisites set forth by Sec. 442 (d) of the LGC which requires that in order for a municipality created by executive order to receive recognition, it must have a set of elective municipal officials holding office at the time of effectivity of the LGC. Andong has never elected its municipal officers at all. Out of obeisance to the ruling in *Pelaez*, the national government ceased to recognize the existence of Andong, depriving it of its share of the public funds, and refusing to conduct municipal elections for the void municipality. Section 442(d) does not serve to affirm or reconstitute the judicially dissolved municipalities which had been previously created by executive orders. They remain inexistent unless recreated through specific legislative enactments. The provision only affirms the legal personalities only of those municipalities, which may have been created through executive fiat but whose existence have not been judicially annulled (*Camid v. Office of the President, G.R. No. 161414, January 17, 2005*).



Q: The Municipality of Sinacaban was created by EO 258 of then President Quirino. Based on the technical description of EO 258, Sinacaban laid claims to 5 barrios located in the adjoining Municipality of Jimenez. The Municipality of Jimenez, while conceding that under EO 258 the disputed area is part of Sinacaban, nonetheless, asserted jurisdiction based on an agreement it had with the Municipality of Sinacaban which fixed the common boundaries of the two municipalities. The Provincial Board declared the disputed area to be part of Sinacaban. Jimenez filed a petition in the RTC alleging that in accordance with *Pelaez v. Auditor General*, the power to create municipalities is essentially legislative and consequently, Sinacaban which was created by an executive order, had no legal personality and no right to assert the territorial claim *vis-à-vis* Jimenez, of which it remains part. The RTC, however, held that Sinacaban is a *de facto* corporation since it had completely organized itself even prior to the *Pelaez* case and exercised corporate powers for 40 years before its existence was questioned. Does the municipality of Sinacaban legally exist?

A: YES. The factors are present as to confer to Sinacaban the status of at least a *de facto* municipal corporation, in the sense that its legal existence has been recognized and acquiesced publicly and officially. Sinacaban had been in existence for 16 years when *Pelaez v. Auditor General* was decided on, yet the validity of EO 258 had never been questioned. On the contrary, the State and even the municipality of Jimenez itself have recognized Sinacaban's corporate existence. Lastly, Sec. 442 (d) of the LGC must be deemed to have cured any defect in the creation of Sinacaban (*Mun. of Jimenez v. Baz Jr, G.R. No. 105746, December 2, 1996*).

***De facto* Municipal Corporation vs. Municipal Corporation by Estoppel (2010 Bar)**

De Facto	Estoppel
A public corporation that exists although it has not complied with the statutory requirements like:	A corporation which is so defectively formed as not to be a <i>de facto</i> corporation but is considered a corporation in relation to someone who dealt with it and acquiesced in its exercise of its corporate functions or entered into a contract with it
a. Authorization by a valid law	(<i>Martin, Public Corporations, 1985 ed., p.20</i>).
b. A colorable and <i>bona fide</i> attempt to organize under a valid law	
c. An assumption of powers conferred under the law	
It primarily attends to	

the needs of the general welfare.	
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REQUISITES FOR CREATION, CONVERSION, DIVISION, MERGER, AND DISSOLUTION

Authority to create municipal corporations

An LGU may be created, divided, merged, abolished, or its boundaries substantially altered either:

1. By law enacted by Congress in case of province, city, municipality, or any other political subdivision;
2. By an ordinance passed by the *Sangguniang Panlalawigan* or *Sangguniang Panlungsod* concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in the Local Government Code (LGC), *Sec. 6*.

NOTE: Failure to provide for seat of government is not fatal. Under Sec. 12 of the LGC, the city can still establish a seat of government after its creation (*Samson v. Aguirre, G.R. No. 133076, September 22, 1999*).

Creation of municipalities by the President

The authority to create municipal corporations is essentially legislative in nature. Thus, the EOs, which created municipalities were declared null and void because Sec. 68 of the Revised Administrative code was repealed by the 1935 constitution (*Pelaez v. Auditor General, G.R. No. L-23825, December 24, 1965*). Municipalities created by an EO could not claim to be a *de facto* municipal corporation, because there is no valid law authorizing incorporation.

Requisites or limitations imposed on the creation or conversion of municipal corporations

1. *Plebiscite requirement* – Must be approved by majority of the votes cast in a plebiscite called for such purpose in the political unit or units directly affected (*Local Government Code, Sec. 20*).

NOTE: The residents of the mother province must participate in the plebiscite to conform to the constitutional requirement (*Tan v. COMELEC, G.R. No. 73155, July 11, 1986; Padilla v. COMELEC, G.R. No. 103328, October 19, 1992*).

2. *Income requirement* – Must be sufficient and based on acceptable standards to provide for all essential government facilities and services and special functions, commensurate with the size of its population as expected by the LGU concerned.



Average annual income for the last consecutive year should be at least:

- a. Province – P 20M
- b. Highly Urbanized City – P 50M
- c. City – P 100M (R.A. 9009 amending Sec. 450 of LGC)
- d. Municipality – P 2.5M

NOTE: Income under the 1991LGC pertains to all funds of the LGU including the Internal Revenue Allotment. However, under R.A. 9009 which deals with the conversion of a municipality into a component city, the funds must be internally-generated.

3. *Population requirement* – determined as the total number of inhabitants within the territorial jurisdiction of the LGU concerned. The required minimum population shall be:

- a. *Barangay* – 2,000

XPN: *Barangays* located in:

- i. Metro Manila – 5,000
- ii. Highly urbanized cities – 5,000

- b. Municipality – 25,000
- c. City – 150,000
- d. Highly Urbanized Cities – 200,000
- e. Province – 250,000

4. *Land requirement* - Must be contiguous, unless it is comprised of two or more islands, or is separated by a LGU independent to the others. It must be properly identified by metes and bounds with technical descriptions, and sufficient to provide for such basic services and facilities. Area requirements are:

- a. *Barangay* – may be created out of a contiguous territory (LGC, Sec. 386)
- b. Municipality – 50 sq. km. (LGC, Sec. 442)
- c. City – 100 sq. km. (LGC, Sec. 450).
- d. Province – 2,000 sq.km. (LGC, Sec. 461)

NOTE: Compliance with the foregoing indicators shall be attested to by:

- a. The Department of Finance (Income requirement);
- b. NSO (Population requirement); and
- c. The Lands Management Bureau of DENR (Land requirement) [LGC, Sec. 7(c)]

Depending on the type of LGU created, the presence of all the requirements of Population (P), Land Area (LA), and Income (I) may vary (Sections 461, 450, 442, 386, 1991 LGC)

<i>Barangay</i>	<i>P and LA</i>
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<i>City</i>	<i>P and Y, or Y and LA</i>
<i>Province</i>	<i>P and Y, or Y and LA</i>
<i>Municipality</i>	<i>P and LA and Y</i>
<i>Highly Urbanized City</i>	<i>P and Y</i>

(Agra, A.C. *Amicus Imperiorum Locorum*, 2016)

Corporate existence

Corporate existence of LGUs commences upon the *election* and *qualification* of its chief executive and majority of the members of its *sanggunian*, unless some other time is fixed therefor by law or ordinance creating it (LGC, Sec. 14).

Q: Several bills aiming to convert certain municipalities into cities were pending at the end of the 11th Congress' existence. However, the same were not passed into law. During the 12th Congress, R.A. 9009 was enacted amending the LGC which increased the income requirement for the conversion of municipalities into cities from P20M to P100M. Congress deliberated on exempting the earlier mentioned municipalities from the new income requirement but no concrete action came out of such deliberations.

The municipalities filed individual cityhood bills containing a common proviso exempting them from the new income requirement. The Congress approved the same. Concerned parties protested that such laws allowed a "wholesale conversion" of municipalities and is therefore unconstitutional. The challenged "cities" claim that it was the intent of the Congress to grant them exemption from the income requirement, as per the deliberations of the 11th Congress.

- a. Are the cityhood laws valid?
- b. What will become of the cityhood bills then pending deliberation in the Senate during the 11th Congress upon the enactment of R.A. No. 9009?

A:

- a. **YES.** The cities covered by the Cityhood Laws had conversion bills pending during the 11th Congress and have also complied with the requirements of the LGC prescribed prior to its amendment by R.A. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, the Court should do no less by stamping its imprimatur to the clear and unmistakable legislative intent and by duly



recognizing the certain collective wisdom of Congress, who holds the power of the purse, only sought the well-being of respondent municipalities in enacting the Cityhood Laws, having seen their respective capacities to become component cities of their provinces, which was temporarily stunted by the enactment of R.A. 9009. By allowing respondent municipalities to convert into component cities, Congress desired only to uphold the very purpose of the LGC, *i.e.*, to make the LGUs “enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals,” which is the very mandate of the Constitution (*League of Cities of the Philippines v. COMELEC*, G.R. No. 176951, April 12, 2011).

- b. R.A. No. 9009 would not apply to the cityhood bills then pending deliberation in the Senate during the 11th Congress. R.A. No. 9009 took effect when the 12th Congress was incipient. By reason of the clear legislative intent to exempt the municipalities covered by the cityhood bills pending during the 11th Congress, the House of Representatives adopted a Joint Resolution to exempt the municipalities covered by the cityhood bills from the coverage of Republic Act No. 9009 which was not however acted upon. Even so, the House of Representatives readopted the Joint Resolution during the 12th Congress. Thereafter, the cityhood bills were individually filed in the House of Representatives, and were all unanimously and favorably voted upon. The bills, when forwarded to the Senate, were likewise unanimously approved. The acts of both Chambers of Congress show that the exemption clauses ultimately incorporated in the Cityhood Laws are but the express articulations of the clear legislative intent to exempt the respondents, without exception, from the coverage of R.A. No. 9009. Thereby, R.A. No. 9009, and, by necessity, the LGC, were amended, not by repeal but by way of the express exemptions being embodied in the exemption clauses (*League of Cities of the Philippines v. COMELEC*, G.R. No. 176951, April 12, 2011).

NOTE: On November 18, 2008, the SC ruled the cityhood laws unconstitutional. On December 21, 2009, it reversed the ruling. Then again, on August 24, 2010, it decided to uphold the 2008 ruling. And finally, on April 12, 2011 it upheld the constitutionality of the creation of the 16 new cities.

Q: May Congress validly delegate to the ARMM Regional Assembly the power to create provinces, cities, and municipalities within the ARMM pursuant to Congress’s plenary legislative powers?

A: IT DEPENDS. There is no provision in the Constitution that conflicts with the delegation to regional legislative bodies of the power to create municipalities and barangays. However, the creation of provinces and cities is another matter. Only Congress can create provinces and cities, because the creation of the same necessarily includes the creation of legislative districts, a power only Congress can exercise under Sec. 5 Art. VI of the Constitution and Sec. 3 of the Ordinance appended to it.

The ARMM Regional Assembly cannot enact a law creating a national office like the office of a district representative of Congress because the legislative powers of the ARMM Regional Assembly operate only within its territorial jurisdiction as provided in Sec. 20 Art. X of the Constitution (*Sema v. COMELEC*, G.R. No. 177597, July 16, 2008).

Q: Sec. 461 of the LGC provides that before a province could be created, it must comply with the 2000-km land area requirement. Art. 9(2) of the LGC-IRR, however, exempts the creation of provinces with more than one island from the said land area requirement. Thus, Dinagat Province – consisting of more than one island, with a total land area of 802.12 sq. km, and has an average annual income of P82 M as certified by the Bureau of Local Government Finance– was created through a law pursuant to the exception expressly provided in the said LGC-IRR provision. Is the creation of Dinagat Province valid?

A: YES. When the exemption was expressly provided in Art. 9(2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Sec. 461 of the LGC and to reflect the true legislative intent which is to allow an exception to the land area requirement in cases of non-contiguity also as regards to provinces especially considering the physical configuration of the Philippine archipelago. The land area requirement should be read together with the territorial contiguity, whereas the land area, while considered as an indicator of viability of LGU, is not conclusive in showing that Dinagat Province cannot become a province taking into account its average annual income. Hence, the basic services to its constituents has been proven possible and sustainable making Dinagat Province ready and capable of becoming a province (*Navarro v. Executive Secretary*, G.R. No. 180050, April 12, 2011).



In exempting provinces composed of one or more islands from both the contiguity and land area requirements, Article 9 of the IRR cannot be considered inconsistent with the criteria under Section 461 of the Local Government Code. Far from being absolute regarding application of the requirement of a contiguous territory of at least 2,000 square kilometers as certified by the Land Management Bureau, Section 461 allows for said exemption by providing, under paragraph (b) thereof, that the territory need not be contiguous if (the new province) comprises two or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. For as long as there is compliance with the income requirement, the legislative intent is, after all, to the effect that the land area and population requirements may be overridden by the established economic viability of the proposed province. **(2014 Bar)**

Q: Congress passed a law providing for the apportionment of a new legislative district in CDO City. COMELEC subsequently issued a resolution implementing said law. Zander now assails the resolution, contending that rules for the conduct of a plebiscite must first be laid down, as part of the requirements under the Constitution. According to Zander, the apportionment is a conversion and division of CDO City, falling under Sec. 10 Art. X of the Constitution, which provides for the rule on creation, division, merger, and abolition of LGUs. Decide.

A: There is no need for a plebiscite. CDO City politically remains a single unit and its administration is not divided along territorial lines. Its territory remains whole and intact. Thus, Sec. 10, Art. X of the Constitution does not come into play.

No plebiscite is required for the apportionment or reapportionment of legislative districts. A legislative district is not a political subdivision through which functions of government are carried out. It can more appropriately be described as a representative unit that merely delineates the areas occupied by the people who will choose a representative in their national affairs. A plebiscite is required only for the creation, division, merger, or abolition of local government units (*Bagabuyo v. COMELEC, G.R. No. 176970, December 8, 2008*).

Q: The Municipality of Dagupan was converted into the City of Dagupan by virtue of Act No. 170.

However, before the government of the city was organized, the government of the Municipality of Dagupan continued to act as a municipality. Are the acts of the municipality considered to be acts of the city?

A: NO. After Act No. 170 which created the City of Dagupan took effect and before the organization of the government of the City of Dagupan, the political subdivision which comprises the territory of the Municipality of Dagupan continued to act as a municipality because the government of the city had not yet been organized and the other officers thereof appointed or elected. The conversion of that municipality into a city did not make *ipso facto* the acts of the elected officials of the said municipality the acts of the City of Dagupan because the latter can only act as a city through the city officers designated by law after they have been appointed or elected and have qualified. In the meantime or during the period of transition, the Municipality had to function temporarily as such; otherwise there would be chaos or no government at all within the boundaries of the territory. The status of the Municipality may be likened to that of a public officer who cannot abandon his office although the successor had already been appointed, and has to continue his/her office whatever length of time the interregnum, until the successor qualifies or takes possession of the office (*Mejia v. Balolong, G.R. No. L-1925, September 16, 1948*).

Q: Is the conversion of a component city to a highly urbanized city (HUC) considered within the ambit of "creation, division, merger, abolition or substantial alteration of boundaries" under Sec. 10, Art. X of the Constitution?

A: YES. While conversion to an HUC is not explicitly provided in Sec. 10, Art. X of the Constitution, the Court nevertheless observes that the conversion of a component city into an HUC is a substantial alteration of boundaries.

"Substantial alteration of boundaries" involves and necessarily entails a change in the geographical configuration of LGU or units. However, the phrase "boundaries" should not be limited to the mere physical one, referring to the metes and bounds of the LGU, but also to its political boundaries. It also connotes a modification of the demarcation lines between political subdivisions, where the LGU's exercise of corporate power ends and that of the other begins. And as a qualifier, the alteration must be "substantial" for it to be within the ambit of the constitutional provision (*Umali v. COMELEC, G.R. No. 203974, April 22, 2014*).



NOTE: It is the duty of the President to declare a city as highly urbanized after it shall have met the minimum requirements, upon proper application and ratification in a plebiscite by qualified voters therein (*Sec. 453, LGC*). The provision makes it ministerial for the President, upon proper application, to declare a component city as highly urbanized once the minimum requirements, which are based on certifiable and measurable indices under Sec. 452 of LGC, are satisfied. The mandatory language "shall" used in the provision leaves the President with no room for discretion (*Ibid.*).

Requirements for division and merger of LGUs

1. It shall not reduce the income, population, or land area of the LGU/s concerned to less than minimum requirements prescribed;
2. Income classification of the original LGU/s shall not fall below its current income classification prior to division (*LGC, Sec. 8*);
3. Plebiscite be held in LGUs affected (*LGC, Sec. 10*);
4. Assets and liabilities of the municipality/ies affected by such organization or creation of a new municipality shall be equitably distributed between the LGUs affected and new LGU [*RA 688, Sec. 1 (3)*].

NOTE: When a municipal district of other territorial divisions is converted or fused into a municipality all property rights vested in original territorial organization shall become vested in the government of the municipality [*RA 688, Sec. 1 (4)*].

Abolition of LGU

LGUs may be abolished by:

1. *Congress* – In case of provinces, city, municipality, or any other political subdivision.
2. *Sangguniang Panlalawigan or Sangguniang Panlungsod* – In case of a *barangay*

XPN: Metropolitan Manila area and in cultural communities.

LGUs may be abolished when its income, population, or land area has been irreversibly reduced to less than the minimum standards prescribed for its creation, as certified by the national agencies in Sec. 17 to Congress or to the *sanggunian* concerned. The law or ordinance abolishing a LGU shall specify the province, city, municipality, or barangay with which the LGU sought to be abolished will be incorporated or merged (*LGC, Sec. 9*).

Required vote on creation, division, merger,

abolition, or substantial alteration of boundaries of LGUs

Majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected.

NOTE: Said plebiscite shall be conducted by the COMELEC within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date (*LGC, Sec. 10*).

A *barangay* may officially exist on record and the fact that nobody resides in the place does not result in its automatic cessation as a unit of local government.

Under the LGC of 1991, the abolition of an LGU may be done by Congress in the case of a province, city, municipality, or any other political subdivision. In the case of a *barangay*, except in Metropolitan Manila area and in cultural communities, it may be done by the *Sangguniang Panlalawigan* or *Sangguniang Panglungsod* concerned subject to the mandatory requirement of a plebiscite conducted for the purpose in the political units affected (*Sarangani v. COMELEC, G.R. No. 135927, June 26, 2000*).

NOTE: No plebiscite is required for merger of administrative regions. This is because the requirement of a plebiscite in a merger expressly applies only to provinces, cities, municipalities, or barangays. (*Abbas v. COMELEC, G.R. No. 89651, November 10, 1989*)

Q: Through a plebiscite, RA 7720 took effect and converted Municipality XYZ to an independent component city. RA 8528 was later enacted and amended RA 7720 which downgraded XYZ from an independent component city to a component city without the approval of the people of XYZ in a plebiscite. Is a plebiscite required when a local government unit is downgraded?

A: YES. Sec. 10, Art. X of the Constitution calls for the people of the LGU directly affected to vote in a plebiscite whenever there is a material change in their rights and responsibilities.

They may call the downgrading of XYZ to a component city as a mere transition but they cannot blink away from the fact that the transition will radically change its physical and political configuration as the rights and responsibilities of its people. As such, the city mayor will be placed under the administrative supervision of the provincial governor; the resolutions and ordinances of the city council will have to be reviewed by the Provincial



Board; taxes collected by the city will have to be shared with the province; and there would be a reduction in their IRA. Thus, the changes are substantial.

When R.A. 7720 upgraded the status of XYZ City from a municipality to an independent component city, it required the approval of its people through a plebiscite called for that purpose because the consent of the people serves as a checking mechanism to any exercise of legislative power. Hence, there is no reason why the same should not be done when R.A. 8528 downgrades the status of their city. The rules cover all conversions, whether upward or downward so long as the result is a material change in the LGU directly affected (*Miranda v. Aguirre*, G.R. No. 133064, September 16, 1999).

NOTE: The plebiscite requirement that applies to the division of a province, city, municipality or barangay under the Local Government Code should not apply to and be a requisite for the validity of a legislative apportionment or reapportionment. A legislative apportionment does not mean a division of local government unit where the apportionment takes place (*Bagabuyo v. COMELEC*, G.R. No. 176970, December 08, 2008).

Q: BP Blg. 885 was enacted creating a new province in the island of Negros to be known as the Province of Negros del Norte. Pursuant to such, the COMELEC conducted a plebiscite. Petitioners opposed this and contended that BP Blg. 885 is unconstitutional and is not in complete accord with the LGC because the voters of the parent province of Negros Occidental, other than those living within the territory of the new province of Negros del Norte, were not included in the plebiscite. Are the petitioners correct?

A: YES. The Constitution provides that whenever a province is created, divided, or merged and there is substantial alteration of the boundaries, "the approval of a majority of votes in the plebiscite in the unit or units affected" must first be obtained. The creation of the proposed new province of Negros del Norte will necessarily result in the division and alteration of the existing boundaries of Negros Occidental (parent province). Plain and simple logic will demonstrate that two political units would be affected. The first would be the parent province of Negros Occidental because its boundaries would be substantially altered. The other affected entity would be composed of those in the area subtracted from the mother province to constitute the proposed province of Negros del Norte (*Tan v. COMELEC*, G.R. No. 73155, July 11, 1986).

Q: Prior to R.A. 7675 which converts the Municipality of Mandaluyong into a Highly Urbanized City, the municipalities of Mandaluyong and San Juan belonged to only one legislative district. After the law was passed, the people of Mandaluyong approved of the conversion of the Municipality of Mandaluyong into a highly urbanized city. The turnout at the plebiscite was only 14.41% of the voting population. Nevertheless, there were many who voted "yes" than those who voted "no." By virtue of these results, R.A. 7675 was deemed ratified and in effect. Should the people of San Juan participate in the plebiscite on whether to convert Mandaluyong into a highly urbanized city?

A: NO. The principal subject involved in the plebiscite was the conversion of Mandaluyong into a highly urbanized city. The matter of separate district representation was only ancillary thereto. Thus, the inhabitants of San Juan were properly excluded from the said plebiscite as they had nothing to do with the change of status of neighboring Mandaluyong (*Tobias et al. v. Abalos*, G.R. No. L-114783, December 8, 1994).

PRINCIPLES OF LOCAL AUTONOMY

Local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Autonomy does not contemplate making mini-states out of local government units, as in the federal governments of the USA. Autonomy, in the constitutional sense, is subject to the guiding star, though not control, of the legislature, albeit the legislative responsibility under the Constitution and as the "supervision clause" itself suggest, is to wean local government units from over-dependence on the central government.

Autonomy, however, is not meant to end the relation of partnership and interdependence between the central administration and local government units. Local governments, under the Constitution, are subject to regulation, however limited, and for no other purpose than precisely, albeit paradoxically, to enhance self-government (*Ganzon v. Court of Appeals*, G.R. No. 93252, August 5, 1991).

Decentralization

Decentralization is a decision by the central government authorizing its subordinates, whether geographically or functionally defined, to exercise authority in certain areas. It involves decision-making by sub-national units. It is typically delegated power, wherein a larger government chooses to delegate



certain authority to more local governments (*Disomangcop v. Secretary of Public Works and Highways*, G.R. No. 149848, November 25, 2004).

Forms of Local Autonomy: Decentralization of Administration and Decentralization of Power

Decentralization of Administration	Decentralization of Power
The central government merely delegates administrative powers to political subdivisions in order to broaden the base of the government power, and incidentally making LGUs more responsive and accountable.	Involves abdication, by the national government, of political power in favor of LGUs declared to be autonomous. The autonomous government becomes accountable not to the central authorities but to its constituency (<i>Limbona v. Mangelin</i> , G.R. No. 80391, February 28, 1989).
It relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns.	

Scope of Delegated Power

Under the Philippine concept of local autonomy, only **administrative powers** over local affairs are delegated to political subdivisions. In turn, economic, political, and social developments at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal (*Pimentel Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000).

This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall (*Magtajas v. Pryce Properties Corp.*, G.R. No. 111097, July 20, 1994).

Forms of Decentralization: Deconcentration and Devolution

Deconcentration	Devolution
It is administrative in nature and involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local office.	It connotes political decentralization, or the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to the local government units. This is a more liberal form of decentralization since there is actual transfer of powers and responsibilities.
This is also referred to as administrative decentralization.	

NOTE: Devolution aims to grant greater autonomy to local government units in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities (*Disomangcop v. Secretary of Public Works and Highways*, G.R. No. 149848, November 25, 2004).

Consequences of Devolution

1. The devolution shall include the transfer to the LGU of the records, equipment, and other assets and personnel of national agencies and offices corresponding to the devolved powers, functions, and responsibilities.
2. Personnel of said national agencies or offices shall be absorbed by the LGUs to which they belong or in whose areas they are assigned to the extent that it is administratively viable.

NOTE: The rights accorded to such personnel pursuant to civil service law, rules and regulations shall not be impaired.

3. Regional directors who are career executive service officers and other officers of similar rank in the said regional offices who cannot be absorbed by the LGU shall be retained by the national government, without any diminution of rank, salary or tenure [*LGC, Sec. 17 (i)*].

NOTE: The LGC did not fully devolve the enforcement of the *small-scale mining law* to the provincial government, as its enforcement is subject to the supervision, control and review of the DENR, which is in charge, subject to law and higher authority, of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization of the country's natural



resource (*League of Provinces of the Philippines v. DENR, G.R. 175368, April, 11, 2013*).

Q: Before the passage of RA. 7160, the task of delivering basic social services was dispensed by the national government through the DSWD. Upon the promulgation and implementation of the LGC, some of the functions of the DSWD were transferred to the LGUs. Mayor Plaza II signed a MOA for the Devolution of the DSWD to the City of Butuan. DSWD's services, personnel, assets and liabilities, and technical support systems were transferred to its city counterpart. By virtue of the MOA, Mayor Plaza issued EO. 06-92 reconstituting the City Social Services Development Office (CSSDO), devolving or adding thereto 19 national DSWD employees, its office was transferred from the original CSSDO building to the DSWD building.

Aida, Lorna, and Fe refused to recognize Joaquin as their new head and to report at the DSWD building. They contended that the issuance of EO. 06-92 by Mayor Plaza and the designation of Joaquin as Officer-in-charge of the CSSDO are illegal.

Is Mayor Plaza empowered to issue E.O. 06-92 in order to give effect to the devolution and have authority over Aida, Lorna and Fe?

A: YES. Section 17 of the Local Government Code authorizes the devolution of personnel, assets and liabilities, records of basic services, and facilities of a national government agency to local government units. Under this Code, the term "devolution" refers to the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities. As a consequence, E.O. 503 was enacted by then President Corazon Aquino to govern and ensure the efficient transfer of responsibilities to the LGU concerned. Section 2 (g) provides: "The local chief executive shall be responsible for all devolved functions. He may delegate such powers and functions to his duly authorized representative xxx".

It is clear that Mayor Plaza is empowered to issue E.O. 06-92 in order to give effect to the devolution decreed by the LGC. As the local chief executive of Butuan City, Mayor Plaza has the authority to reappoint devolved personnel and may designate an employee to take charge of a department until the appointment of a regular head (*Plaza II and Tuazon v. Cassion, G.R. No. 136809, July 27, 2004*).

Q: When can the local chief executive choose not to absorb a national government agency personnel?

A: Absorption is mandatory on the part of the local chief executive and incumbent upon the personnel absorbed. The word "shall" is used both in Sec. 17 (i) of LGC, and Sec. 2 (a)(2) of EO. 503, which connotes a mandatory order.

The only instance that the LGU concerned may choose not to absorb the NGA personnel is **when absorption is not administratively viable**, meaning, it would result to **duplication of functions**. However, in the absence of the recognized exception, devolved permanent personnel shall be **automatically reappointed** (*Sec. 2(12), EO 503*) by the local chief executive concerned immediately upon their transfer which shall not go beyond June 30, 1992 (*CSC v. Yu, G.R. No. 189041, July 31, 2012*).

POWERS OF LOCAL GOVERNMENTS

Sources of powers of a municipal corporation

1. Constitution
2. Statutes (e.g. LGC)
3. Charter
4. Doctrine of right to self-government

Classifications of municipal powers

1. Express, implied, inherent
2. Government or public, corporate or private
3. Intramural, extramural

NOTE: An LGU can only exercise its powers within its territorial boundary or jurisdiction (intramural powers). As exceptions, an LGU can exercise its powers outside the subdivision (extramural) on three occasions; namely, 1.) protection of water supply; 2.) prevention of nuisance; and 3.) police purposes. (*Agra, A.C. Amicus Imperiorum Locorum, 2016*)

4. Mandatory, directory; ministerial, discretionary

Execution of powers of LGU

1. Where statute prescribes the manner of exercise, procedure must be followed.
2. Where the law is silent, LGU has the discretion to select reasonable means and methods to exercise

Governmental Powers of LGU

1. Police power
2. Basic services and facilities
3. Power to generate and apply resources
4. Power of eminent domain
5. Taxing Power
6. Reclassification of Land
7. Local legislative power



8. Closure and opening of roads
9. Corporate Powers
10. Liability of LGUs
11. Settlement of Boundary Disputes
12. Succession of Local Officials
13. Discipline of Local Officials
14. Authority over police units

Interpretation of powers of LGUs

Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy (*San Juan v. Civil Service Commission*, G.R. No. 92299, April 29, 1991).

Q: Typhoon Bangis devastated the Province of Sinagtala. Roads and bridges were destroyed which impeded the entry of vehicles into the area. This caused food shortage resulting in massive looting of grocery stores and malls. There is power outage also in the area. For these reasons, the governor of the province declares a state of emergency in their province through Proclamation No. 1. He also invoked Section 465 of the Local Government Code of 1991 (R.A. No. 7160) which vests on the provincial governor the power to carryout emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the same proclamation, the governor called upon the members of the Philippine National Police, with the assistance of the Armed Forces of the Philippines, to set up checkpoints and chokepoints, conduct general searches and seizures including arrests, and other actions necessary to ensure public safety. Was the action of the provincial governor proper? Explain. (2015 Bar)

A: NO. Given the foregoing, respondent provincial governor is not endowed with the power to call upon the armed forces at his own bidding. In issuing the assailed proclamation, Governor Tan exceeded his authority when he declared a state of emergency and called upon the Armed Forces, the police. The calling-out powers contemplated under the Constitution is exclusive to the President. An exercise by another official, even if he is the local chief executive, is ultra vires, and may not be justified by the invocation of Section 465 of the Local Government Code. The Local Government Code does not involve the diminution of central powers inherently vested in the National Government, especially not the prerogatives solely granted by the Constitution to the President in matters of security and defense. The intent behind the powers granted to local government units is fiscal, economic, and administrative in nature. The Code

is concerned only with powers that would make the delivery of basic services more effective to the constituents, and should not be unduly stretched to confer calling-out powers on local executives (*Kulayan vs Tan*, G.R. No. 187298, July 3, 2012).

POLICE POWER

Nature of the police power of the LGU

The police power of the LGU is not inherent. LGUs exercise the police power under the general welfare clause (*LGC, Sec. 16*).

General welfare clause

LGUs shall exercise powers that are necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of general welfare. Within their respective territorial jurisdiction, LGUs shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among its residents, maintain peace and order, and preserve the comfort and convenience of their inhabitance (*R.A. 7160, Sec. 16*).

Two branches of the General Welfare Clause

1. *General Legislative Power* – Authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law.
2. *Police Power Proper* – Authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property (*Rural Bank of Makati v. Municipality of Makati*, July 2, 2004).

Requisites/limitations for the proper exercise of the police power (PREN)

1. The interests of the public generally, as distinguished from those of a particular class, require the interference of the state (*Equal Protection Clause*)
2. The means employed are reasonably necessary for the attainment of the object sought to be accomplished and not duly oppressive (*Due Process*)



Clause)

3. Exercisable only within the territorial limits of the LGU, except for protection of water supply (*LGC, Sec. 16*)
4. Must not be contrary to the Constitution and the laws.

NOTE: There must be a concurrence of a lawful subject and lawful method (*Lucena Grand Central v. JAC, G.R. No. 148339 February 23, 2005*).

Tests when police power is invoked as the rationale for the valid passage of an ordinance

1. *Rational relationship test* – An ordinance must pass the requisites as discussed above.
2. *Strict scrutiny test* – The focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest (*Fernando v. St. Scholastica's College, G.R. No. 161107, March 12, 2013*).

Q: The Sangguniang Panlungsod of Davao City enacted an ordinance imposing a ban against aerial spraying as an agricultural practice by all agricultural entities within Davao City. Pursuant to the ordinance, the ban against aerial spraying would be strictly enforced three months thereafter. The Pilipino Banana Growers and Exporters Association, Inc. (PBGEA) filed a petition in the RTC to challenge the constitutionality of the ordinance, alleging that the ordinance exemplified the unreasonable exercise of police power and violated the equal protection clause. The RTC declared that the ordinance is valid and constitutional saying that the City of Davao had validly exercised police power under the General Welfare Clause of the *Local Government Code* and that the ordinance was consistent with the Equal Protection Clause. On appeal, however, the CA reversed the judgment of the RTC. Is the ordinance valid?

A: NO. Requiring the respondents and other affected individuals to comply with the consequences of the ban within the three-month period under pain of penalty like fine, imprisonment and even cancellation of business permits would definitely be oppressive as to constitute abuse of police power.

The ordinance violated the equal protection clause. The imposition of the ban is too broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted. Such imposition becomes unreasonable inasmuch as it patently bears no relation to the purported inconvenience, discomfort, health risk and environmental danger which the ordinance seeks to address. The burden will now

become more onerous to various entities, including those with no connection whatsoever to the intended purpose of the ordinance. (*Mosqueda vs. Pilipino Banana Growers & Exporters Assoc., G.R. No. 189185 & 189305, August 16, 2016*).

Ministerial duty of the Local Chief Executive

The LGC imposes upon the city mayor, to “enforce all laws and ordinances relative to the governance of the city.” As the chief executive of the city, he has the duty to enforce an ordinance as long as it has not been repealed by the *Sanggunian* or annulled by the courts. He has no other choice. It is his ministerial duty to do so (*Social Justice Society v. Atienza, Jr., G.R. No. 156052, March 7, 2007*).

Abatement of nuisance without judicial proceeding

The abatement of nuisances without judicial proceedings applies to nuisance *per se* or those which affect the immediate safety of persons and property and may be summarily abated under the undefined law of necessity (*Tayaban v. People, G.R. No. 150194, March 6, 2007*).

The LGUs have no power to declare a particular thing as a nuisance unless such a thing is a nuisance *per se*; nor can they effect the extrajudicial abatement of a nuisance *per accidens*. Those things must be resolved by the courts in the ordinary course of law (*AC Enterprises, Inc. v. Frabelle Properties Corp., G.R. No. 166744, November 2, 2006*).

Q: The Mayor of Malay, Aklan ordered through Executive Order No. 10 the demolition of the Boracay West Cove Resort and Hotel without first conducting judicial proceedings on the ground that the said hotel was built on a “no build zone” as demarcated in Municipal Ordinance 2000-131. The owner of the Boracay West Cove imputed grave abuse of discretion on the part of the Mayor. Is the owner correct?

A: NO. Generally, LGUs have no power to declare a particular thing as a nuisance unless such a thing is a nuisance *per se*. Despite the hotel’s classification as a nuisance *per accidens*, however, the Court still found in this case that the LGU may nevertheless properly order the hotel’s demolition. This is because, in the exercise of police power and the general welfare clause, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government.

Otherwise stated, the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare.



One such piece of legislation is the LGC, which authorizes city and municipal governments, acting through their local chief executives, to issue demolition orders. Under existing laws, the office of the mayor is given powers not only relative to its function as the executive official of the town; it has also been endowed with authority to hear issues involving property rights of individuals and to come out with an effective order or resolution thereon. Pertinent herein is Sec. 444 (b)(3)(vi) of the LGC, which empowered the mayor to order the closure and removal of illegally constructed establishments for failing to secure the necessary permits.

In the case at bar, Boracay West Cove admittedly failed to secure the necessary permits, clearances, and exemptions before the construction, expansion, and operation of Boracay West Cove's hotel in Malay, Aklan. To recall, Boracay West Cove declared that the application for zoning compliance was still pending with the office of the mayor even though construction and operation were already ongoing at the same time. As such, it could no longer be denied that it openly violated Municipal Ordinance 2000-131 (*Aquino v. Municipality of Malay, Aklan, G.R. No. 211356, September 29, 2014*).

NOTE: Based on law and jurisprudence, the office of the mayor has quasi-judicial powers to order the closing and demolition of establishments. This power granted by the LGC, is not the same power devolved in favor of the LGU under Sec. 17 (b)(2)(ii), which is subject to review by the DENR. The fact that the building to be demolished is located within a forestland under the administration of the DENR is of no moment, for what is involved herein, strictly speaking, is not an issue on environmental protection, conservation of natural resources, and the maintenance of ecological balance, but the legality or illegality of the structure. Rather than treating this as an environmental issue then, focus should not be diverted from the root cause of this debacle-compliance (*Aquino v. Municipality of Malay, Aklan, supra.*).

Powers deemed implied in the power to grant permits and licenses

Power to issue licenses and permits include power to revoke, withdraw, or restrict through the imposition of certain conditions. However, the conditions must be reasonable and cannot amount to an arbitrary interference with the business (*Acebedo Optical Company, Inc. v. CA, G.R. No. 100152, March 31, 2000*).

Object of the permit requirement

The object of the permit requirement is the proper supervision of the enumerated businesses, trades, or

occupation.

NOTE: The issuance of permits and licenses is a function of the local chief executive.

License/permit to do business vs. License to engage in a profession

License/Permit To Do Business	License to Engage in a Profession
Granted by the local authorities.	Board or Commission tasked to regulate the particular profession.
Authorizes the person to engage in the business or some form of commercial activity.	Authorizes a natural person to engage in the practice or exercise of his or her profession.

Q: Acebedo Optical Company applied with the Office of the City Mayor of Iligan for a business permit. The City Mayor issued such permit subject to special conditions that the company cannot put up an optical clinic but only a commercial store; it cannot examine patients and prescribe glasses; and it cannot sell eyeglasses without a prescription from an independent optometrist. Samahan ng Optometrist ng Pilipinas lodged a complaint against Acebedo for violating the conditions which resulted in the revocation of its permit. Did the City Mayor have the authority to impose special conditions in the grant of the business permit?

A: NO. Police power is essentially regulatory in nature and the power to issue license or grant business permits, if for a regulatory purpose, is within the ambit of this power. This power necessarily includes the power to revoke and to impose conditions. However, the power to grant or issue licenses or business permits must always be exercised in accordance with law, with utmost observance of the rights of all concerned to due process and equal protection of the law. What is sought by Acebedo from the City Mayor is a permit to engage in the business of running an optical shop. It does not purport to seek a license to engage in the practice of optometry. A business permit is issued primarily to regulate the conduct of business and the City Mayor cannot, through the issuance of such permit, regulate the practice of a profession. Such a function is within the exclusive domain of the administrative agency specifically empowered by law to supervise the profession, in this case the Professional Regulations Commission and the Board



of Examiners in Optometry (*Acebedo Optical Company Inc. v. Court of Appeals, G.R. No. 100152, March 31, 2000*).

NOTE: However, certain professions may be affected by the exercise of police power. An ordinance in Manila was held not to regulate the practice of massage, much less restrict the practice of such profession. Instead, the end sought to be obtained was to prevent the commission of immorality under the practice of prostitution in an establishment masquerading as a massage clinic where the operation thereof offers to massage superficial parts of the bodies of customers for hygienic or aesthetic purposes (*Physical Therapy Organization of the Philippines v. Municipal Board of Manila, G.R. No. L-10488, August 30, 1957*).

Q: The Sangguniang Panglungsod of Marikina City enacted an ordinance "Regulating the Construction of Fences and Walls in the City of Marikina". The ordinance provided, among others, that fences should not be more than 1 meter and fences in excess of 1 meter shall be 80% see-thru. It further provided that in no case shall walls and fences be built within the five meter parking area allowance located between the front monument line and the building line of commercial and industrial establishments and educational and religious institutions. Is the ordinance valid?

A: NO. It has long been settled that the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property solely to preserve or enhance the aesthetic appearance of the community. Compelling the respondents to construct their fence in accordance with the assailed ordinance is, thus, a clear encroachment on their right to property, which necessarily includes their right to decide how best to protect their property (*Fernando v. St. Scholastica's College, G.R. No. 161107, March 12, 2013*).

Q: Can the City Mayor of Manila validly take custody of several women of ill repute and deport them as laborers without knowledge and consent to the said deportation?

A: NO. One can search in vain for any law, order, or regulation, which even hints at the right of the Mayor of the city of Manila or the chief of police of that city to force citizens of the Philippine Islands — and these women despite their being in a sense lepers of society are nevertheless not chattels but Philippine citizens protected by the same constitutional guaranties as are other citizens — to change their domicile from Manila to another locality (*Villavicencio v. Lukban, G.R. No. L-14639, March 25, 1919*).

Q: May an LGU require customers to fill out a prescribed form stating personal information such as name, gender, nationality, age, address, and occupation before they could be admitted to a motel, hotel, or lodging house?

A: YES. The Ordinance was enacted precisely to minimize certain practices hurtful to public morals such as the increase in the rate of prostitution, adultery, and fornication in Manila traceable in great part to the existence of motels, which "provide a necessary atmosphere for clandestine entry, presence, and exit" and thus become the "ideal haven for prostitutes and thrill-seekers". Precisely it was intended to curb the opportunity for the immoral or legitimate use to which such premises could be and are being devoted (*Ermita-Malate Hotel and Motel Operations Association v. City Mayor of Manila, G.R. No. L-24693, July 31, 1967*).

Q: Mayor Lim signed into law, City Ordinance 7774, which prohibits short time admission in hotels, motels, lodging houses, pension houses, and similar establishments in the City of Manila to protect public morals. Pursuant to the above policy, short-time admission and rate, wash-up rate or other similarly concocted terms, are hereby prohibited in hotels, motels, inns, lodging houses, pension houses and similar establishments in the City of Manila. Petitioners argued that the Ordinance is unconstitutional and void since it violates the right to privacy and the freedom of movement; it is an invalid exercise of police power; and it is an unreasonable and oppressive interference in their business. Is the ordinance valid?

A: NO. Individual rights may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. However well-intentioned the Ordinance may be, it is in effect an arbitrary and whimsical intrusion into the rights of the establishments as well as their patrons. The Ordinance needlessly restrains the operation of the businesses of the petitioners as well as restricting the rights of their patrons without sufficient justification. The Ordinance rashly equates wash rates and renting out a room more than twice a day with immorality without accommodating innocuous intentions (*White Light Corp., v. City of Manila, G.R. No. 122846, January 20, 2009*).

Q: The Sangguniang Panlungsod of Pasay City passed an ordinance requiring all disco pub owners to have all their hospitality girls tested for the AIDS virus. Both disco pub owners and the



hospitality girls assailed the validity of the ordinance for being violative of their constitutional rights to privacy and to freely choose a calling or business. Is the ordinance valid? Explain. (2010 Bar)

A: YES. The ordinance is a valid exercise of police power. The right to privacy yields to certain paramount rights of the public and defers to the exercise of police power. The ordinance is not prohibiting the disco pub owners and the hospitality girls from pursuing their calling or business but is merely regulating it (*Social Justice Society v. Dangerous Drugs Board*, G.R. No. 157870, Nov. 3, 2008).

This ordinance is a valid exercise of police power, because its purpose is to safeguard public health (*Beltran v. Secretary of Health*, G.R. No. 133640, November 25, 2005).

NOTE: Municipal corporations cannot prohibit the operation of night clubs. They may be regulated, but not prevented from carrying on their business (*Dela Cruz v. Paras*, G.R. Nos. L-42571-72, July 25, 1983).

Q: The Quezon City Council issued Ordinance 2904 which requires the construction of arcades for commercial buildings to be constructed in zones designated as business zones in the zoning plan of Quezon City, along EDSA. However, at the time the ordinance was passed there was yet no building code passed by the legislature. Thus, the regulation of the construction of the buildings are left to the discretion of the LGUs. Under this ordinance, the city council required that the arcade is to be created in a way that building owners are not allowed to construct his wall up to the edge of the property line, thereby creating a space under the first floor. In effect, property owners relinquish the use of the space as an arcade for pedestrians instead of using the property for their own purposes.

Subsequently, Justice Gancayo sought to be exempted from the application of the ordinance to which the City Council responded favorably in his favor.

MMDA then sent a notice of demolition to Justice Gancayo alleging that a portion of his building violates the National Building Code in relation to the ordinance. Is the Ordinance a valid exercise of police power in regulating the use of property in a business zone?

A: YES. In the exercise of police power, property rights of individuals may be subject to restraints and burdens in order to fulfill the objectives of the government. Property rights must bow down to the

primacy of police power because it must yield to the general welfare. It is clear that the objective of the ordinance were the health and safety of the city and its inhabitants. At the time the ordinance was passed, there was no national building code, thus there was no law which prohibits the city council from regulating the construction of buildings, arcades and sidewalks in their jurisdiction (*Gancayo v. City Government of Quezon City*, G.R. No. 177807, Oct. 11, 2011).

Q: Rivera was found washing her clothing near the Santolan pumping station near Boso-Boso dam. Rivera's act of washing clothing interfered with the purity of the water which was supplied to Manila by the Santolan pumping station. She was charged with violation of Sec. 4(f) of Ordinance No. 149 which prohibited washing of garments in the waters of any river or water course. Manila's municipal board adopted the same section by virtue of the Acts of the Philippine Commission and was authorized to purify the source of water supply as well as the drainage area of such water supply. Rivera contented that the municipal court of the City of Manila and the Court of First Instance of the City of Manila had no jurisdiction to try her for the crime committed. Does the CFI of Manila have jurisdiction over the offense, considering that the washing of clothes was in the Mariquina River?

A: YES. Boundaries usually mark the limit for the exercise of the police powers by the municipality. However, in certain instances – the performance of police functions, the preservation of public health and acquisition of territory for water supply – the municipality is granted police power beyond its boundaries. The Santolan pumping station is a part of the public water supply of Manila with water taken from that part of the Mariquina River, in the waters of which Rivera washed clothes. Public water supply is not limited to water supply owned and controlled by a municipal corporation, but should be construed as meaning a supply of water for public and domestic use, furnished or to be furnished from water works. The provisions of the Ordinance No. 149 would be meaningless and absurd if made applicable only to the Santolan pumping station and not to that part of the Mariquina River immediately above it and from which the pumping station draws water for the use of the inhabitants of the City of Manila (*Rivera v. Campbell*, G.R. No. L-11119, March 23, 1916).

Q: Following the campaign of President Duterte to implement a nationwide curfew for minors, Navotas City and the City of Manila started to strictly implement their curfew ordinances on



minors through police operations.

The Manila Ordinance cites only four (4) exemptions, namely: (a) minors accompanied by their parents, family members of legal age, or guardian; (b) those running lawful errands such as buying of medicines, using of telecommunication facilities for emergency purposes and the like; (c) night school students and those who, by virtue of their employment, are required in the streets or outside their residence after 10:00 p.m.; and (d) those working at night.

For its part, the Navotas Ordinance provides more exceptions, to wit: (a) minors with night classes; (b) those working at night; (c) those who attended a school or church activity, in coordination with a specific barangay office; (d) those traveling towards home during the curfew hours; (e) those running errands under the supervision of their parents, guardians, or persons of legal age having authority over them; (f) those involved in accidents, calamities, and the like. It also exempts minors from the curfew during these specific occasions: Christmas eve, Christmas day, New Year's eve, New Year's day, the night before the barangay fiesta, the day of the fiesta, All Saints' and All Souls' Day, Holy Thursday, Good Friday, Black Saturday, and Easter Sunday.

Petitioners argue that the Curfew Ordinances are unconstitutional because they deprive minors of the right to liberty and the right to travel without substantive due process. Are said ordinances valid?

A: The Manila and Navotas Ordinances are not valid.

While rights may be restricted, the restrictions must be minimal or only to the extent necessary to achieve the purpose or to address the State's compelling interest.

The Manila and Navotas Ordinances are not narrowly drawn in that their exceptions are inadequate and therefore, run the risk of overly restricting the minors' fundamental freedoms. To be fair, both ordinances protect the rights to education, to gainful employment, and to travel at night from school or work. However, even with those safeguards, the Navotas Ordinance and, to a greater extent, the Manila Ordinance still do not account for the reasonable exercise of the minors' rights of association, free exercise of religion, rights to peaceably assemble, and of free expression, among others. The exceptions under the Manila Ordinance are too limited, and thus, unduly trample upon protected liberties. The Navotas Ordinance is apparently more protective of constitutional rights

than the Manila Ordinance; nonetheless, it still provides insufficient safeguards: First, although it allows minors to engage in school or church activities, it hinders them from engaging in legitimate non-school or non-church activities in the streets or going to and from such activities; thus, their freedom of association is effectively curtailed. It bears stressing that participation in legitimate activities of organizations, other than school or church, also contributes to the minors' social, emotional, and intellectual development, yet, such participation is not exempted under the Navotas Ordinance. Second, although the Navotas Ordinance does not impose the curfew during Christmas Eve and Christmas day, it effectively prohibits minors from attending traditional religious activities (such as *simbang gabi*) at night without accompanying adults, xxx. This legitimate activity done pursuant to the minors' right to freely exercise their religion is therefore effectively curtailed. Third, the Navotas Ordinance does not accommodate avenues for minors to engage in political rallies or attend city council meetings to voice out their concerns in line with their right to peaceably assemble and to free expression. (*SPARK, Et. al. vs. Quezon City, GR No. 225442, August 08, 2017*).

Q: The City of Manila passed a Curfew Ordinance on minors which imposes several penalties for violators. Petitioners argue that the Curfew Ordinance is unconstitutional because it contravenes RA 9344's express command that no penalty shall be imposed on minors for curfew violations. Is petitioners' contention proper?

A: YES. The Manila Ordinance is in conflict with the clear language of Section 57-A of RA 9344, as amended, and hence, invalid.

The law does not prohibit the enactment of regulations that curtail the conduct of minors, when the similar conduct of adults are not considered as an offense or penalized (i.e., status offenses). Instead, what it prohibits is the imposition of penalties on minors for violations of these regulations. Consequently, the enactment of curfew ordinances on minors, without penalizing them for violations thereof, is not violative of Section 57-A.

As worded, the prohibition in Section 57-A is clear, categorical, and unambiguous. It states that "[n]o penalty shall be imposed on children for x x x violations [of] juvenile status offenses]." Thus, for imposing the sanctions of reprimand, fine, and/or imprisonment on minors for curfew violations, portions of Section 4 of the Manila Ordinance directly and irreconcilably conflict with the clear language of Section 57-A of RA 9344, as amended, and hence, invalid (*SPARK, Et. al. vs. Quezon City, GR*



No. 225442, August 08, 2017).

Q: The Sanggunian of Cagayan De Oro enacted Ordinance No. 3353 prohibiting the issuance of business permits and cancelling existing business permits for the operation of casinos; and Ordinance No. 3375-93, prohibiting the operation of a casino. Z assailed the validity of the ordinances on the ground that both violated P.D. 1869 which permits the operation of casinos, centralized and regulated by PAGCOR. However, the Sanggunian contended that pursuant to the LGC they have the police power to prohibit the operations of casinos for the general welfare. Was there a valid exercise of police power?

A: NO. P.D. 1869 creating the PAGCOR expressly authorized it to centralize and regulate all games of chance including casinos. This has not been amended by the LGC which empowers LGUs to prevent or suppress only those forms of gambling prohibited by law. Casino gambling is, however, authorized under P.D. 1869. This decree has the status of a statute that cannot be annulled or amended by a mere ordinance. PAGCOR can set up casinos with or without the consent of the host local government (*Magtajas v. Pryce Properties and PAGCOR*, G.R. No. 111097, July 20, 1994).

Contempt Powers

Although the *Sanggunian* of a municipality may exercise certain powers under the General Welfare Clause, citing nonmembers of the *Sanggunian* for contempt or issuing subpoena to compel nonmembers to attend public hearings or investigation is not one of them.

EMINENT DOMAIN (2005, 2010 Bar)

The power of eminent domain is one of the fundamental powers of the state. Simply put, it is the power of the State to take private property for public use, purpose, or welfare upon payment of just compensation.

Local government units have no inherent power of eminent domain. Local governments can exercise such power only when expressly authorized by the Legislature. By virtue of the Local Government Code, Congress conferred upon local government units the power to expropriate (*Masikip v. City of Pasig*, G.R. No. 136349, January 23, 2006).

However, while the power of eminent may be validly delegated to LGUs, the exercise of such power by the delegated entities is not absolute. The scope of such

delegated power is narrower than that of the delegating authority and may be exercised only when authorized by Congress, subject to its control and the restraints imposed through the law conferring the power. Strictly speaking, the power of eminent domain delegated to an LGU is in reality not eminent but "inferior". The national legislature is still the principal of the LGUs, and the latter cannot go against the principal's will or modify the same (*Beluso v. Municipality of Panay*, G.R. No. 153974, August 7, 2006).

NOTE: LGUs may, through its local chief executive and acting pursuant to an ordinance, exercise power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation (*LGC, Sec. 19*).

Requisites for the valid exercise of the power of eminent domain(OPCO)

1. An **Ordinance** is enacted by the local legislative council authorizing the local chief executive, in behalf of the LGU, to exercise the power of eminent domain or pursue expropriation proceeding over a particular private property.

NOTE: LGU cannot authorize an expropriation of private property through a mere resolution of its lawmaking body.

2. It must be for **Public use, purpose, or welfare** or for the benefit of the poor or landless

NOTE: Property already devoted to public use may not be taken for another public use (*City of Manila v. Chinese Community of Manila*, G.R. No. L-14355, October 31, 1919).

3. There must be payment of just Compensation
4. A valid and definite **Offer** has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted (*Municipality of Paranaque v. V.M. Realty Corporation*, G.R. No. 127820. July 20, 1998).

NOTE: The Supreme Court held "the burden is on the LGU to prove its compliance with the mandatory requirement of a valid and definite offer to the owner of the property before its filing of its complaint for expropriation. Failure to prove compliance with the mandatory requirement will result in the dismissal of the complaint.

Due process requirements in eminent domain (PRP)



Offer must be in writing specifying:

1. Property sought to be acquired
2. The reason for the acquisition
3. The price offered

NOTE:

1. If owner accepts offer: a contract of sale will be executed.
2. If owner accepts but at a higher price: Local chief executive shall call a conference for the purpose of reaching an agreement on the selling price; If agreed, contract of sale will be drawn (*Implementing Rules and Regulations of LGC, Art. 35*).

Elements for an authorized immediate entry

1. Filing of a complaint for expropriation which is sufficient in form and substance
2. Deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration.

NOTE: Upon compliance, the issuance of writ of possession becomes ministerial (*City of Iloilo v. Legaspi, G.R. No. 154614, Nov. 25, 2004*).

The advance deposit required under Section 19 of the LGC constitutes an advance payment only in the event the expropriation prospers. Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed. This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation. If the proceedings fail, the money could be used to indemnify the owner for damages (*City of Manila v. Alegar Corporation, G.R. No. 187604, June 25, 2012*).

Phases of expropriation proceedings

1. The determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit.

NOTE: It ends with an order, if not dismissal of action, of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint.

An order of dismissal, if this be ordained, would be a final one, since it finally disposes

of the action and leaves nothing more to be done by the Court on the merits. The order of condemnation shall be a final one, as the Rules expressly state, in the proceedings before the Trial Court, no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.

2. The determination by the RTC of the just compensation for the property sought to be taken.

This is done by the Court with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue (*Brgy. San Roque, Talisay, Cebu v. Hrs. of Francisco Pastor, G.R. No. 138896, June 20, 2000*).

NOTE: LGU's prolonged occupation of private property without the benefit of expropriation proceedings entitles the landowner to damages (*City of Iloilo v. Judge Contreras-Besana, G.R. No. 168967, February 12, 2010*).

Satisfaction of "public use" requirement

In case only a few could actually benefit from the expropriation of the property, the same does not diminish its public use character. It is simply not possible to provide for all at once, land and shelter, for all who need them. Corollary to the expanded notion of public use, expropriation is not anymore confined to vast tracts of land and landed estates. It is therefore of no moment that the land sought to be expropriated is less than half a hectare only. Through the years, the public use requirement in eminent domain has evolved into a flexible concept, influenced by changing conditions. Public use now includes the broader notion of indirect public benefit or advantage including in particular, urban land reform and housing (*Philippine Columbian Association v. Panis, G.R. No. L-106528, Dec. 21, 1993*).

NOTE: The passage of R.A. 7279, the "Urban Development and Housing Act of 1992" introduced a limitation on the size of the land sought to be expropriated for socialized housing. The law expressly exempted "small property owners" from expropriation of their land for urban land reform (*City of Mandaluyong v. Aguilar, G.R. No. 137152, Jan. 29, 2001*).

Satisfaction of "genuine necessity" requirement

The right to take private property for public



purposes necessarily originates from “the necessity” and the taking must be limited to such necessity. In *City of Manila v. Chinese Community of Manila*, it is held that the very foundation of the right to exercise eminent domain is a genuine necessity and that necessity must be of a public character. Moreover, the ascertainment of the necessity must precede or accompany and not follow the taking of the land. In *City of Manila v. Arellano Law College*, the necessity within the rule that the particular property to be expropriated must be necessary, does not mean an absolute, but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with such benefit (*Masikip v. City of Pasig*, G.R. No. 136349, Jan. 23, 2006).

Q: May LGUs expropriate a property to provide a right-of-way to residents of a subdivision?

A: NO. Considering that the residents who need a feeder road are all subdivision lot owners, it is the obligation of the subdivision owner to acquire a right-of-way for them. However, the failure of the subdivision owner to provide an access road does not shift the burden to the LGU concerned. To deprive respondents of their property instead of compelling the subdivision owner to comply with his obligation under the law is an abuse of the power of eminent domain and is patently illegal. Worse, the expropriation will actually benefit the subdivision’s owner who will be able to circumvent his commitment to provide road access to the subdivision in conjunction with his development permit and license to sell from the Housing and Land Use Regulatory Board, and also be relieved of spending his own funds for a right-of-way (*Barangay Sindalan v. CA* G.R. No. 150640, March 22, 2007).

Q: Municipality of Panay issued resolutions authorizing the municipal government through the Mayor to initiate expropriation proceedings. A petition for expropriation was filed by the Municipality of Panay. Petitioners are the owners of parcels of land which are going to be expropriated by the LGU. Petitioners argue that such expropriation was based only on a resolution and not on an ordinance contrary to Sec. 19 of LGC. Is the exercise of eminent domain by the Municipality of Panay valid?

A: NO. The LGC expressly requires an ordinance for the purpose of expropriation, and a resolution which merely expresses the sentiment of the municipal council will not suffice. As respondent’s expropriation

in this case was based merely on a resolution, such expropriation is clearly defective. While the Court is aware of the constitutional policy promoting local autonomy, the court cannot grant judicial sanction to an LGU’s exercise of its delegated power of eminent domain in contravention of the very law giving it such power [*Beluso v. Municipality of Panay (Capiz)*, G.R. No. 153974, Aug. 7, 2006].

Q: Spouses Yusay owned a parcel of land, half of which they used as their residence, and the rest they rented out to nine other families. Allegedly, the land was their only property and only source of income. The Sangguniang Panglungsod of Mandaluyong City adopted a resolution authorizing the City Mayor to take the necessary legal steps for the expropriation of the land of the spouses for the purpose of developing it for low cost housing for the less privileged but deserving city inhabitants. The spouses then filed a petition for certiorari and prohibition in the RTC, praying for the annulment of the Resolution due to its being unconstitutional, confiscatory, and without force and effect. The City countered that the Resolution was a mere authorization. Hence, the suit of the spouses was premature. Will the petition for certiorari and prohibition prosper?

A: NO. Certiorari did not lie against the Sangguniang Panglungsod, which was not a part of the Judiciary settling an actual controversy involving legally demandable and enforceable rights when it adopted Resolution No. 552, but a legislative and policy-making body declaring its sentiment or opinion. Furthermore, the remedy of prohibition was not called for, considering that only a resolution expressing the desire of the *Sangguniang Panglungsod* to expropriate the petitioners’ property was issued. It was premature for the petitioners to mount any judicial challenge, for the power of eminent domain could be exercised by the City only through the filing of a verified complaint in the proper court. Before the City as the expropriating authority filed such verified complaint, no expropriation proceeding could be said to exist. Until then, the petitioners as the owners could not also be deprived of their property under the power of eminent domain (*Spouses Antonio and Fe v. CA*, G.R. No. 156684, April 6, 2011).

Q: Petitioner Himlayang Pilipino filed a petition to annul an ordinance which provides that at least 6% of the total area of every private cemetery shall be set aside for charity burial grounds of deceased paupers. Petitioner alleged that the ordinance is an invalid exercise of the power of eminent domain as they were not paid just compensation. However, the City



government of Quezon City argued that the ordinance is an exercise of police power, hence, just compensation is not necessary. Is the ordinance valid?

A: NO. The power to regulate does not include the power to prohibit. *A fortiori*, the power to regulate does not include the power to confiscate. The ordinance in question not only confiscates but also prohibits the operation of a memorial park cemetery. There is no reasonable relation between the setting aside of at least 6% of the total area of a private cemeteries for charity burial grounds of deceased paupers and the promotion of health, morals, good order, safety, or the general welfare of the people.

Section 9 of the assailed Ordinance is not a mere police regulation but an outright confiscation. It is not an exercise of police power but eminent domain. It deprives a person of his private property without due process of law and without payment of just compensation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries. Police power does not involve the taking or confiscation of property with the exception of few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare (*Quezon City v. Erieta*, G.R. No. L-34915, June 24, 1983).

Q: The municipal council of Baao, Camarines Sur, passed an ordinance providing that any person who will construct or repair a building should, before doing such, obtain a written permit from the Municipal Mayor and if said building destroys the view of the Public Plaza or occupies any public property, it shall be removed at the expense of the owner of the building or house. X filed a written request for a permit to construct a building on a parcel of land adjacent to their gasoline station. The request was denied because the proposed building would destroy the view or beauty of the public plaza. X proceeded with the construction of the building without a permit because his former house was destroyed by a typhoon. X was charged and convicted of violating the Ordinance for having constructed a building that destroys the view of the public plaza without a mayor's permit. Is the ordinance valid?

A: NO. The ordinance is unreasonable and oppressive, in that it operates to permanently deprive appellants of the right to use their own property; hence, it oversteps the bounds of police power, and amounts to a taking of appellants' property without just compensation. But while property may be regulated in the interest of the

general welfare and, in its pursuit, the State may prohibit structures offensive to sight, the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community. To legally achieve that result, the municipality must give the owners just compensation and an opportunity to be heard. The Ordinance was beyond the authority of said municipality to enact, and is therefore null and void (*People v. Fajardo*, G.R. No. L-12172, Aug. 29, 1958).

Q: The Philippine Tourism Authority sought the expropriation of 282 hectares of rolling land situated in Barangay Alubog and Babag, Cebu City, under an express authority to acquire by purchase or by any other means any private land within the tourism zone. Petitioner contended that the taking was not for public use and that there is no specific constitutional provision authorizing the taking of private property for tourism purposes. Is the contention valid?

A: NO. Expropriation by the PTA under P.D. 564 of land owned by the local government for promotion of tourism is a valid exercise of the State's power of eminent domain. The concept of public use is not limited to traditional purposes. Here, as elsewhere, the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded. The State's power of eminent domain extends to the expropriation of land for tourism purposes although this specific objective is not expressed in the Constitution. The policy objectives of the framers can be expressed only in general terms such as social justice, local autonomy, conservation and development of the national patrimony public interest, and general welfare, among others (*Heirs of Ardon v. Reyes*, G.R. No. L-60549, Oct. 26, 1983).

Q: Sps. Hipolito are the registered owners of a parcel of land in Santa Ana, Manila. They applied for permission to erect a strong-material residential building on the lot. For more than 40 days, the city engineer took no action. Wherefore, Hipolito wrote him a letter manifesting his readiness to pay the fee and to comply with existing ordinances governing the issuance of building permits. The engineer declined to issue the permit as according to the Urban Commission's Adopted Plan for the Sta. Ana, the streets will be widened to the respective widths of 22-m. and 10 m and will affect the proposed building. Was the engineer correct in not issuing the permit?



A: NO. The refusal of the city engineer to issue a building permit to private landowners constitutes taking when there is no law or ordinance requiring private land owners to conform to the proposed widening of the street approved by the Urban Commission. Where the City has not expropriated the strip of land affected by the proposed widening of the street, inasmuch as there is no legislative authority to establish a building line, the denial of this permit would amount to taking of private property for public use under the power of eminent domain without following the procedure prescribed for the exercise of such power. The city engineer required to issue the building permit upon payment of the fees (*Hipolito v. City of Manila*, G.R. No. L-3887, Aug. 21, 1950).

Eminent Domain under Constitution vs. LGC

The right of expropriation is not inherent in a municipal corporation. When it attempts to expropriate private property and the owner makes an objection, the courts have the authority to decide the question of genuine necessity. Upon the other hand, Congress may directly determine the necessity for appropriating private property, which is a political question which the courts cannot resolve (*City of Manila v. Chinese Community*, G.R. No. L-14355, October 31, 1919).

Private property already devoted to public use can still be a subject of expropriation by Congress but not by LGUs.

TAXING POWER

Nature of the power of taxation of LGUs

The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article V of the 1987 Constitution. The exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy (*MIAA v. Marcos*, G.R. No. 120082, Sept. 11, 1996).

NOTE: While the power to tax is inherent in the State, the same is not true for LGUs because although the mandate to impose taxes granted to LGUs is categorical and long established in the 1987 Philippine Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Section 5, Article X of the 1987 Constitution. The LGUs' power to tax is subject to

the limitations set forth under Section 133 of the LGC (*Batangas City v. Pilipinas Shell Petroleum Philippines*, G.R. No. 187631, July 8, 2015).

Rationale for local taxation

The power of taxation is an essential and inherent attribute of sovereignty. It is a power that is purely legislative and which the central legislative body cannot delegate to either executive or judicial department without infringing upon the theory of separation of powers. The exception, however, lies in the case of municipal corporations, to which said theory does not apply. Legislative powers may be delegated to legislative governments in respect of matters of local concern. This is sanctioned by immemorial practice. By necessary implication, legislative power to create political corporations for purposes of local self-government carries with it the power to confer on such local government agencies the power to tax (*Pepsi-Cola Bottling Co. v. Municipality of Tanauan*, G.R. No. L-31156, Feb. 27, 1976).

ARMM's taxing power

The ARMM has the legislative power to create sources of revenues within its territorial jurisdiction and subject to the provisions of the 1987 Constitution and national laws [1987 Constitution, Art. X, Sec. 20(2)].

Power to tax by ordinary LGUs vs. Power to tax by Autonomous Regions

Basis	LGU's Outside Autonomous Regions	LGU'S Inside Autonomous Regions
<i>As to Taxing Power</i>	Sec. 5, Art. X, 1987 Constitution	Sec. 20(b), Art. X, 1987 Constitution
<i>As to governing guidelines and limitations</i>	LGC of 1991	Respective Organic Act

NOTE: Unlike Sec. 5, Art. X, Sec. 20, Art. X of the 1987 Constitution is not self-executing. It merely authorizes Congress to pass the Organic Act of the autonomous regions which shall provide for legislative powers to levy taxes upon their inhabitants.

Local Fiscal Autonomy



Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Further, a basic feature of local fiscal autonomy is the constitutionally mandated automatic release of the shares of local governments in the national internal revenue (*Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004).

NOTE: A “no report, no release” policy may not be validly enforced against offices vested with fiscal autonomy such as Constitutional Commissions and local governments. The automatic release provision found in the Constitution means that these local government units cannot be required to perform any act to receive the “just share” accruing to them from the national coffers (*Civil Service Commission v. Department of Budget and Management*, G.R. No. 158791, July 22, 2005).

Q: Can the local governments tax national government instrumentalities?

A: Sec. 133 of the LGC states that “unless otherwise provided in the Code, local governments cannot tax national government instrumentalities. This doctrine emanates from the “supremacy” of National government over local governments. Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as “a tool for regulation” (*Basco v. Philippine Amusements and Gaming Corporation*, G.R. No. 91649, May 14, 1991).

Q: The President, through A.O. 372, ordered the withholding of 10% of the LGUs’ IRA “pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation” in the country. Is the A.O. valid?

A: NO. A basic feature of local fiscal autonomy is the automatic release of the shares of LGUs in the national internal revenue. This is mandated by no less than the Constitution. The LGC specifies further that the release shall be made directly to the LGU concerned within five days after every quarter of the year and “shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.” As a rule, the

term “shall” is a word of command that must be given a compulsory meaning. The provision is, therefore, imperative (*Pimentel Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000).

Q: In 1993, Cebu City imposed amusement taxes under Sec. 140 of the LGC and passed “Revised Omnibus Tax Ordinance of the City of Cebu.” Secs. 42 and 43, Chapter XI of the city ordinance requires proprietors, lessees or operators of theatres, cinemas, concert halls, circuses, boxing stadia, and other places of amusement, to pay an amusement tax equivalent to 30% of the gross receipts of admission fees. Meanwhile, R.A. 9167 was enacted on June 7, 2002 creating the Film Development Council of the Philippines (FDCP). Secs 13 and 14 of R.A. 9167 provided for the tax treatment of certain graded films — film producers were to be entitled to an incentive equivalent to the amusement tax imposed and collected by the cities, subject to various rates depending on the grade of their film, to be remitted to the FDCP. FDCP had sent demand letters for unpaid amusement tax reward with five percent surcharge for each month of delinquency due to the producers. The proprietors and cinema operators refused to remit the amounts while Cebu City insisted on its claim on the amounts in question. Then, Cebu City filed a petition for declaratory relief before RTC, Branch 14, asking it to declare Secs. 13 and 14 of R.A. 9167 invalid and unconstitutional. Colon Heritage Corporation filed a similar petition before the RTC Branch 5, seeking to declare Sec. 14 unconstitutional. The RTC declared Secs. 13 and 14 of R.A. 9167 unconstitutional. The RTC said what R.A. 9167 seeks to accomplish is the segregation of amusement taxes raised and collected by Cebu City and its subsequent transfer to FDCP. This, it said, is a confiscatory measure where the national government extracts money from the local government’s coffers and transfers it to the FDCP, a private agency, which in turn, will award the money to private persons, film producers, for having produced graded films. Is the RTC correct?

A: YES. Under R.A. 9167, covered LGUs still have the power to levy amusement taxes, **albeit at the end of the day, they will derive no revenue therefrom.** The same, however, cannot be said for FDCP and the producers of graded films since the amounts thus levied by the LGUs which should rightfully accrue to them, they being the taxing authority—will be going to their coffers. As a matter of fact, it is only through the exercise by the LGU of said power that the funds to be used for the amusement tax reward can be raised. Without said imposition, the producers of graded films will receive nothing from the owners, proprietors and lessees of cinemas operating within



the territory of the covered LGU.

Taking the resulting scheme into consideration, it is apparent that what Congress did in this instance was not to exclude the authority to levy amusement taxes from the taxing power of the covered LGUs, but to earmark, if not altogether confiscate, the income to be received by the LGU from the taxpayers in favor of and for transmittal to FDCP, instead of the taxing authority. This is in clear contravention of the constitutional command that taxes levied by LGUs shall accrue exclusively to said LGU and is repugnant to the power of LGUs to apportion their resources in line with their priorities.

It is a basic precept that the inherent legislative powers of Congress, broad as they may be, are limited and confined within the four walls of the Constitution. Accordingly, whenever the legislature exercises its power to enact, amend, and repeal laws, it should do so without going beyond the parameters wrought by the organic law.

In the case at bar, through the application and enforcement of Sec. 14 of R.A. 9167, the income from the amusement taxes levied by the covered LGUs did not and will under no circumstance accrue to them, not even partially, despite being the taxing authority therefor. Congress, therefore, clearly overstepped its plenary legislative power, the amendment being violative of the fundamental law's guarantee on local autonomy (*Film Development Council of the Philippines v. Colon Heritage Realty Corporation, G.R. No. 203754, June 16, 2015*).

Main sources of revenues of LGUs (1991, 1996, 1999, 2007 Bar)

1. *Taxes, fees, and charges* (1987 Constitution Art. X, Sec. 5)
2. *Internal Revenue Allotment (IRA)* - Just share in the national taxes which shall be automatically released to them (1987 Constitution Art. X, Sec. 6)

NOTE: The current sharing is 40% local and 60% national. The share cannot be reduced except if there is unmanageable public sector deficit.

3. Equitable share in the proceeds of the utilization and development of the national wealth within their areas (1987 Constitution Art. X, Sec. 7)

Principles governing exercise of taxing and revenue-sharing powers of LGUs

1. Taxation shall be uniform in each LGU
2. Taxes, fees, charges and other impositions

shall be equitable and based as far as practicable on the taxpayer's ability to pay; it shall be levied and collected only for public purpose; it must not be unjust, excessive, oppressive, or confiscatory; it must not be contrary to law, public policy, national economic policy, or restraint of trade;

3. The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person.
4. The revenue collected shall inure solely to the benefit of, and be subject to disposition by, the local government unit, unless specifically provided therein.
5. Each local government unit shall, as far as practicable, evolve a progressive system of taxation (*LGC, Sec. 130*).

Principles governing financial affairs, transactions and operations of LGUs

1. No money shall be paid out of the local treasury except in pursuance of an appropriation ordinance or law;
2. Local government funds and monies shall be spent solely for public purposes;
3. Local revenue is generated only from sources expressly authorized by law or ordinance, and collection thereof shall at all times be acknowledged properly;
4. All monies officially received by a local government officer in any capacity or on any occasion shall be accounted for as local funds, unless otherwise provided;
5. Trust funds in the local treasury shall not be paid out except in the fulfillment of the purpose for which the trust was created or the funds received;
6. Every officer of the LGU whose duties permit or require the possession or custody of local funds shall be properly bonded, and such officer shall be accountable and responsible for said funds and for the safekeeping thereof in conformity with the provisions of law;
7. Local governments shall formulate sound financial plans and local budgets shall be based on functions, activities, and projects in terms of expected results;
8. Local budget plans and goals shall, as far as practicable, be harmonized with national development plans, goals and strategies in order to optimize the utilization of resources and to avoid duplication in the use of fiscal and physical resources.
9. Local budgets shall operationalize approved local development plans;
10. LGUs shall ensure that their respective budgets incorporate the requirements of their component units and provide for equitable allocation of resources among these component



units;

11. National planning shall be based on local planning to ensure that the needs and aspirations of the people as articulated by the LGUs in their respective local development plans are considered in the formulation of budgets of national line agencies or offices;
12. Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions and operations of LGUs; and
13. The LGU shall endeavor to have a balanced budget in each fiscal year of operation (*LGC, Sec. 305*)

Requirements for a valid tax ordinance(PUJ-NO)

1. The tax is for a public purpose;
2. The rule on uniformity of taxation is observed;
3. Either the person or property taxed is within the jurisdiction of the government levying the tax; and
4. In the assessment and collection of certain kinds of taxes, notice and opportunity for hearing are provided(*Pepsi-Cola Bottling Co. v. Municipality of Tanauan, G.R. No. L-31156, February 27, 1976*).

Procedural requirements for a valid revenue ordinance

1. A prior public hearing on the measure to be conducted according to the prescribed rules.

NOTE: An ordinance levying taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose (*Figuerres v. CA, G.R. No. 119172, March 25, 1999*).

2. Publication of the tax ordinance, within 10 days after their approval, for 3 consecutive days in a newspaper of local circulation, provided that in provinces, cities, and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

NOTE: If the tax ordinance or revenue measure contains penal provisions as authorized in Art. 280 of this Rule, the gist of such tax ordinance or revenue measure shall be published in a newspaper of general circulation within the province where the *sanggunian* concerned belongs (*IRR of LGC, Art. 276*).

Effectivity of tax ordinance

In case the effectivity of any tax ordinance or revenue measure falls on any date other than the

beginning of the quarter, the same shall be considered as falling at the beginning of the next ensuing quarter and the taxes, fees, or charges due shall begin to accrue therefrom (*IRR of LGC, Art. 276*).

Q: The Province of Palawan passes an ordinance requiring all owners/operators of fishing vessels that fish in waters surrounding the province to invest ten percent (10%) of their net profits from operations therein in any enterprise located in Palawan. NARCO Fishing Corp., a Filipino corporation with head office in Navotas, Metro Manila, challenges the ordinance as unconstitutional. Decide. (1991 Bar)

A: The ordinance is invalid. The ordinance was apparently enacted pursuant to Art. X, Sec. 7 of the Constitution, which entitles local governments to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas. However, this should be made pursuant to law. A law is needed to implement this provision and a local government cannot constitute itself unto a law. In the absence of a law, the ordinance in question is invalid.

Authority to determine the legality or propriety of a local tax ordinance or revenue measure

It is the Secretary of Justice who shall determine questions on the legality and constitutionality of ordinances or revenue measures.

Such questions shall be raised on appeal within thirty days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty days from the date of receipt of the appeal.

NOTE: Such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, that within thirty days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction (RTC) (*LGC, Sec. 187*).

Tax Protest

The formal statement, usually in writing, made by a person who is called upon by public authority to pay a sum of money, in which he declares that he does not concede the legality or justice of the claim or his duty to pay it, or that he disputes the amount demanded; the object being to save his right to recover or reclaim the amount, which right would be lost by his



acquiescence. Thus, taxes may be paid under "protest" (*Black's Law Dictionary*).

Requisites of a valid tax protest in a LGU (PAP)

1. Taxpayer first pays the taxes
2. There shall be annotation on the tax receipts the words "paid under protest".
3. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt (*LGC, Sec. 252*).

NOTE: A claim for tax exemption, whether full or partial, does not deal with the authority of local assessor to assess real property tax, but merely raises a question of reasonableness of correctness of such assessment, which requires compliance with Sec. 252 of the LGC (*Camp John Hay Development Corporation v. Central Board of Assessment Appeals, G.R. No. 169234, October 2, 2013*).

Remedies available to the LGUs to enforce the payment of taxes

1. Imposing penalties (surcharges and penalty interest) in case of delinquency (*LGC, Sec. 168*)
2. Availing local government's liens (*LGC, Sec. 173*)
3. Administrative action through distraint of goods, chattels, and other personal property [*LGC, Sec. 174(a)*]
4. Judicial action [*LGC, Sec. 174(b)*]

Community tax

Community tax is a poll or capitation tax which is imposed upon person who resides within a specified territory.

Exempted from the payment of community tax

1. Diplomatic and consular representatives;
2. Transient visitors when their stay in the Philippines does not exceed 3 months (*LGC, Sec. 159*)

Real property taxes

These are directly imposed on privilege to use real property such as land, building, machinery, and other improvements, unless specifically exempted.

Q: After the effectivity of LGC, Bayantel was granted by Congress a legislative franchise with tax exemption privileges which partly reads: "the grantee, its successors or assigns

shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." This provision existed in the company's franchise prior to the effectivity of the LGC. Quezon City then enacted an ordinance imposing a real property tax on all real properties located within the city limits and withdrawing all exemptions previously granted. Among properties covered are those owned by the company. Bayantel asserts that its properties are exempt from tax under its franchise. Is Bayantel correct?

A: YES. The properties are exempt from taxation. The grant of taxing powers to local governments under the Constitution and the LGC does not affect the power of Congress to grant tax exemptions.

The term "exclusive of the franchise" is interpreted to mean properties actually, directly and exclusively used in the radio and telecommunications business. The subsequent piece of legislation which reiterated the phrase "exclusive of this franchise" found in the previous tax exemption grant to the company is an express and real intention on the part of the Congress to once again remove from the LGC's delegated taxing power, all of the company's properties that are actually, directly and exclusively used in the pursuit of its franchise (*The City Government of Quezon City, et al., v. Bayan Telecommunications, Inc., G.R. No. 162015, March 6, 2006*).

Elements so that the President may interfere in local fiscal matters

1. An unmanaged public sector deficit of the national government;
2. Consultations with the presiding officers of the Senate and the House of Representatives and the presidents of the various local leagues;
3. And the corresponding recommendation of the secretaries of the Department of Finance, Interior and Local Government, and Budget and Management (*Pimentel, Jr. v. Aguirre, G.R. No. 132988, July 19, 2000*).

CLOSING AND OPENING OF ROADS

LGU's power to open or close a road

LGU may, pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction; Provided, however, that in case of permanent closure, such ordinance must be approved by at least two-thirds (2/3) of all the members of the *sanggunian*, and when necessary, an adequate substitute for the



public facility that is subject to closure is provided [LGC, Sec. 21(a)].

NOTE: No permanent closure of any local road, street, alley, park, or square shall be effected unless there exists a compelling reason or sufficient justification therefor such as, but not limited to, change in land use, establishment of infrastructure facilities, projects, or such other justifiable reasons as public welfare may require [IRR of LGC, Art. 44(a)].

Limitations of permanent and temporary closure

A. In case of *permanent* closure:

1. The ordinance must be approved by at least 2/3 of all the members of the *Sanggunian* and when necessary provide for an adequate substitute for the public facility. Public hearings shall first be conducted before any ordinance authorizing permanent closure of any local roads, alley, park, or square is enacted.
2. Adequate provision for the public safety must be made
3. The property may be used or conveyed for any purpose for which other real property may be lawfully used or conveyed [LGC, Sec. 21(a)(b)].

NOTE: No freedom park shall be closed permanently without provision for its transfer or relocation to a new site [LGC, Sec. 21(a)(b)].

B. In case of *temporary* closure:

1. It must be for actual emergency, fiesta celebration, public rallies, agricultural or industrial fairs, or an undertaking of public works and highways, telecommunications and water work projects
2. Duration of which shall be specified
3. Except for those activities not officially sponsored or approved by the LGU concerned [LGC, Sec. 21(c)].

NOTE: Any city, municipality or barangay may, by ordinance, temporarily close and regulate the use of a local street, road, thoroughfare or any other public place where shopping malls, Sunday, flea or night markets, or shopping areas may be established and where articles of commerce may be sold or dispensed with to the general public [LGC, Sec. 21(d)].

Material factors to consider in closing a street

The material factors which a municipality must consider in deliberating upon the advisability of

closing a street are:

1. The topography of the property surrounding the street in the light of ingress and egress to other streets;
2. the relationship of the street in the road system throughout the subdivision;
3. the problem posed by the 'dead end' of the street; the width of the street;
4. the cost of rebuilding and maintaining the street as contrasted to its ultimate value to all of the property in the vicinity;
5. the inconvenience of those visiting the subdivision; and
6. Whether the closing of the street would cut off any property owners from access to a street (*Favis v. City of Baguio*, G.R. No. L-29910, April 25, 1969).

Q: The *Sangguniang Barangay* of BSV passed a Resolution which directed the NSV Homeowners Association to open Marshmallow and Chocolate Streets to vehicular and pedestrian traffic. The NSV Homeowners Association, Inc. (NSVHAI), filed a petition claiming that the implementation of the resolution would cause grave injustice and irreparable injury as the affected homeowners acquired their properties for strictly residential purposes, and that the subdivision is a place that the homeowners envisioned would provide them privacy and a peaceful neighborhood, free from the hassles of public places; and that the passage of the Resolution would destroy the character of the subdivision. NSVHAI averred that the opening of the gates of the subdivision would not ease the traffic congestion in the area, and that there were alternative routes available. NSVHAI argued that the *Sangguniang Barangay* has no jurisdiction over the roads and they likewise argued that a *Barangay* Resolution cannot validly cause the opening of the subject roads because under the law, an ordinance is required to effect such an act. Should the *Sangguniang Barangay* pass an ordinance instead of a resolution to open the subject roads?

A: **NO.** LGU's have the power to close and open roads within its jurisdiction as provided for in Sec. 21 of the LGC. This provision, which requires the passage of an ordinance by an LGU to effect the opening of a local road, can have no applicability to the instant case since the subdivision road lots sought to be opened to decongest traffic in the area have already been donated by the Subdivision to, and the titles already issued in the name of, the City Government of Parañaque. Having been already donated or turned over to Parañaque, the road lots in question have since then taken the nature of public roads which are withdrawn from the commerce of man, and hence placed beyond the private rights or claims of NSVHAI. Consequently, BSV *Sangguniang Barangay's* act of



passing the Resolution had for its purpose not the opening of a private road but merely a directive or reminder to the NSVHAI to cause the opening of a public road which should rightfully be open for use to the general public (*New Sun Valley Homeowners' Association Inc. v. Sangguniang Barangay, Barangay Sun Valley, Parañaque City, G.R. No. 156686, July 27, 2011*).

Closure of Freedom Parks

No Freedom Park shall, however, be closed permanently without provision for its transfer or relocation to a new site.

LEGISLATIVE POWER

Nature of local legislative powers

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the State. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe upon the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law (*Batangas CATV v. Court of Appeals, G.R. No. 138810, September 29, 2004*).

NOTE: The rule against undue delegation of legislative powers applies to LGUs. In the case of *Villegas v. Tsai Pao Ho (G.R. No. 29646, October 10, 1978)*, a city ordinance was declared void because it constituted undue delegation of legislative power to the Mayor. The ordinance did not lay down any standard to guide the Mayor in the exercise of his discretion in the issuance or denial of an alien employment permit.

The Sanggunian

A *sanggunian* is a collegial body. Legislation, which is the principal function of the *sanggunian*, requires the participation of all its members so that they may not only represent the interests of their respective constituents but also help in the making of decisions, by voting upon every question put upon the body (*Zamora v. Caballero, G.R. No. 147767, January 14, 2004*).

NOTE: A petition for *certiorari* filed against a *Sangguniang Panlungsod* assailing the legality of an ordinance will not lie since the *Sanggunian* is

not a tribunal, board or officer exercising judicial or quasi-judicial functions (*Liga ng mga Barangay National v. City Mayor of Manila, G.R. No. 154599, January 21, 2004*).

No power to subpoena and hold persons in contempt (1993 Bar)

The contempt power and the subpoena power cannot be deemed implied in the delegation of certain legislative functions to local legislative bodies. These cannot be presumed to exist in favor of the latter and must be considered an exception to Sec. 4 of B.P. Blg. 337 which provides for liberal rules of interpretation in favor of local autonomy. Since the existence of these powers poses a potential derogation of individual rights, the law cannot be liberally construed to have impliedly granted such powers to local legislative bodies. The intention of the people, through their representatives, to share these powers with the local legislative bodies must clearly appear in pertinent legislation (*Negros Oriental II Electric Cooperative Inc., v. Sangguniang Panlungsod ng Dumaguete, G.R. No. L-72492, November 5, 1987*).

Local legislative bodies and their presiding officers

Province	<i>Sangguniang Panlalawigan</i>	Vice-governor
City	<i>Sangguniang Panlungsod</i>	City Vice-mayor
Municipality	<i>Sangguniang bayan</i>	Municipal Vice-mayor
Barangay	<i>Sangguniang barangay</i>	<i>Punong Barangay</i>

NOTE: The presiding officer shall vote only to break a tie [*Sec. 49(a) LGC*].

In the absence of the regular presiding officer or his inability to preside at the *sanggunian* session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer [*LGC, Sec. 49(b); Gamboa v. Aguirre, G.R. No. 134213, July 20, 1999*].

Q: May an incumbent Vice-Governor, acting as governor, continue to preside over the sessions of the Sangguniang Panlalawigan (SP)? If not, who may preside in the meantime?

A:NO. A Vice-Governor who is concurrently an acting governor is actually a quasi-governor. For purposes of exercising his legislative prerogatives and powers, he is deemed a non-member of the SP



for the time being. Being the Acting Governor, the Vice-Governor cannot continue to simultaneously exercise the duties of the latter office, since the nature of the duties of the provincial Governor call for a full-time occupant to discharge them. Such is not only consistent with but also appears to be the clear rationale of the new Code wherein the policy of performing dual functions in both offices has already been abandoned.

The creation of a temporary vacancy in the office of the Governor creates a corresponding temporary vacancy in the office of the Vice-Governor whenever the latter acts as Governor by virtue of such temporary vacancy. The continuity of the Acting Governor's (Vice-Governor) powers as presiding officer of the SP is suspended so long as he is in such capacity.

Under Sec. 49(b), "in the event of the inability of the regular presiding officer to preside at the *sanggunian* session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer" (*Gamboa v. Aguirre*, G.R. No. 134213, July 20, 1999).

Quorum in the *sanggunian*

Quorum is defined as the number of members of a body which when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law, ordinance or any valid act. 'Majority', when required to constitute a *quorum*, means the number greater than half or more than half of any total.

The applicable rule on quorum of local legislative bodies is found in Section 53(a) of the LGC which provides that a majority of all members of the *sanggunian* who have been elected and qualified shall constitute a *quorum* to transact official business. The entire membership must be taken into account in computing the *quorum* (*Zamora v. Caballero*, G.R. No. 147767, January 14, 2004).

NOTE: The determination of the existence of *quorum* is based on the total number of members of the *sanggunian* without regard to filing of a leave of absence (*Zamora v. Caballero*, *ibid.*).

Procedures to be taken by the presiding officer if there is a question on *quorum*

Should there be a question of quorum raised during a session, the presiding officer shall:

1. Immediately proceed to call the roll of the members and
2. Announce the results [LGC, Sec. 53 (a)]

Procedures to be taken by the presiding officer

if there is no *quorum*

The presiding officer may:

1. Declare a recess until such time that quorum is constituted
2. Compel immediate attendance of the members who are absent without justifiable cause
3. Declare the session adjourned for lack of quorum and no business shall be transacted if there is still no quorum despite enforcement of attendance [LGC, Sec. 53 (b)(c)]

Fixing of Sessions

Regular Sessions	Special Sessions
By resolution on the 1 st day of the session immediately following the election of its members	When public interest so demands, special session may be called for by the chief executive or by a majority vote members of <i>sanggunian</i> .

NOTE: The minimum number of regular sessions shall be once a week for the *sangguniang panlalawigan*, *sangguniang panlungsod*, and *sangguniang bayan*, and twice a month for the *sangguniang barangay* [LGC, Sec. 52 (a)].

Guidelines in the conduct of a *sanggunian* session

1. It shall be open to public, unless it is a closed-door session
2. No two sessions, regular or special, may be held in a single day
3. Minutes of the session be recorded and each *sanggunian* shall keep a journal and record of its proceedings which may be published upon resolution of the *sanggunian* concerned.
4. In case of special sessions:
 - a. Written notice to the members must be served personally at least 24 hours before the special session is held
 - b. Unless otherwise concurred in by 2/3 votes of the *sanggunian* members present, there being no *quorum*, no other matters may be considered at a special session except those stated in the notice (LGC, Sec. 52).

Q: On its first regular session, may the *sanggunian* transact business other than the matter of adopting or updating its existing rules or procedure?

A: YES. There is nothing in the language of the LGC that restricts the matters to be taken up during the first regular session merely to the adoption or



updating of the house rules (*Malonzo v. Zamora, G.R. No. 137718, July 27, 1999*).

REQUISITES OF A VALID ORDINANCE

[not-CUPPUn-Gen]

Ordinance

As a municipal statute, it is a rule of conduct or of action, laid down by the municipal authorities that must be obeyed by the citizens. It is drafted, prepared, promulgated by such authorities for the information of all concerned, under and by virtue of powers conferred upon them by law (*United States v. Pablo Trinidad, G.R. No. L-3023, January 16, 1907*).

1. Must not **contravene** the constitution and any statute
2. Must not be **unfair** or oppressive
3. Must not be **partial** or discriminatory
4. Must not **prohibit**, but may regulate trade
5. Must not be **unreasonable**
6. Must be **general** in application and Consistent with public policy (*Magtajas v. Pryce Properties Corporation, Inc., July 20, 1994*).

NOTE: The mere fact that there is already a general statute covering an act or omission is insufficient to negate the legislative intent to empower the municipality to enact ordinances with reference to the same act or omission under the 'general welfare clause' of the Municipal Charter (*United States v. Pascual Pacis, G.R. No. 10363, September 29, 1915*).

Ordinance vs. Resolution

Ordinance	Resolution
Law	Merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter
General and permanent character	Temporary in nature
Third reading is necessary for an ordinance	GR: Third reading is not necessary in resolution XPN: Unless decided otherwise by a majority of all the <i>Sanggunian</i> members (<i>Roble Arrastre, Inc. v. Villaflor, G.R. No. 128509, August 22, 2006</i>).

NOTE: It has been held that even where the statute or municipal charter requires the municipality to act by an ordinance, if a resolution is passed in the manner and with the statutory formality required in

the enactment of an ordinance, it will be binding and effective as an ordinance. Such resolution may operate regardless of the name by which it is called (*Favis v. City of Baguio, G.R. No. L-29910, April 25, 1969*).

Three readings allowed in one day

There is nothing in the LGC which prohibits the three readings of a proposed ordinance from being held in just one session day. It is not the function of the courts to speculate that the councilors were not given ample time for reflection and circumspection before the passage of the proposed ordinance by conducting three readings in just one day (*Malonzo v. Zamora, G.R. No. 137718, July 27, 1999*).

Veto of the Local Chief Executive (1996, 2005 Bar)

The Local Chief Executive may veto the ordinance only once on the ground that the ordinance is *ultra vires* and prejudicial to public welfare. The veto must be communicated to the *sanggunian* within:

- a. 15 days for a province
- b. 10 days for a city or municipality (*LGC, Secs. 54 and 55*)

NOTE: While "to veto or not to veto involves the exercise of discretion," a mayor exceeded his/her authority in an arbitrary manner when he/she vetoes a resolution where there exist sufficient municipal funds from which the salary of the officer could be paid. The Mayor's refusal in complying with the directive of the Director of the Bureau of Local Government that the salary could be provided for is oppressive (*Pilar v. Sangguniang Bayan of Dasol, Pangasinan, G.R. No. L-63216, March 12, 1984*).

Items that the local chief executive can veto

1. Item/s of an appropriation ordinance.
2. Ordinance/resolution adopting local development plan and public investment program
3. Ordinance directing the payment of money or creating liability (*LGC, Sec. 55*)

NOTE: Ordinances enacted by the *sangguniang barangay* shall, upon approval by a majority of all its members be signed by the *punong barangay*. The latter has no veto power.

Approval of ordinances

1. By affixing the signature of the local chief executive on each and every page thereof if he approves the same



2. By overriding the veto of the local chief executive by 2/3 vote of all members of the *sanggunian* if the local chief executive vetoed the same (LGC, Sec. 54)

NOTE: A *sanggunian* may provide for a vote requirement different (not majority vote) from that prescribed in the LGC for certain (but not all) ordinances as in amending a zoning ordinance (*Casino v. Court of Appeals*, G.R. No. 91192, Dec. 2, 1991).

Effectivity of ordinance or resolution

GR: After 10 days from the date a copy is posted in a bulletin board at the entrance of the capitol or city, municipal or barangay hall and in at least 2 conspicuous spaces [LGC, Sec. 59 (a)].

XPN: Unless otherwise stated in the ordinance or resolution [LGC, Sec. 59 (a)].

Effect of the enforcement of a disapproved ordinance or resolution

It shall be a sufficient ground for the suspension or dismissal of the official or employee (LGC, Sec. 58).

Ordinances requiring publication for its effectivity

1. Ordinances that carry with them penal sanctions [LGC, Sec. 59 (c)]
2. Ordinances and resolutions passed by highly urbanized and independent component cities [LGC, Sec. 59 (d)]

Review of ordinances or resolutions (2009 Bar)

Basis	Component Cities and Municipal Ordinances or Resolutions	Barangay Ordinances
<i>As to Who Reviews</i>	<i>Sangguniang Panlalawigan</i>	Sangguniang Panlungsod or Sangguniang Bayan
<i>As to When copies of ordinance or resolutions be forwarded</i>	Within 3 days after approval	Within 10 days after its enactment
<i>As to Period to examine</i>	Within 30 days after the receipt; 1. Examine, or 2. Transmit to the	Within 30 days after the receipt.

	provincial attorney or provincial prosecutor. If it is transmitted, the provincial attorney or prosecutor must submit his comments or recommendations within 10 days from receipt of the document.	
<i>As to When declared valid</i>	If no action has been taken within 30 days after submission.	If no action has been taken within 30 days after submission.
<i>As to When declared invalid (grounds)</i>	If it is beyond the power conferred on the <i>sangguniang panlungsod</i> or <i>sangguniang pangbayan</i> (LGC, Sec. 56)	If inconsistent with the law or city or municipal ordinance. Effect: <i>Barangay ordinance</i> is suspended until such time as the revision called is effected (LGC, Sec. 57)

LOCAL INITIATIVE AND REFERENDUM

Local initiative vs. Referendum (2005 Bar)

Initiative	Referendum
The legal process whereby the registered voters of LGU may directly propose, enact or amend any ordinance (LGC, Sec. 120)	The legal process whereby the registered voters of the LGU may approve, amend or reject any ordinance enacted by the <i>sanggunian</i> (R.A. 7160, Sec. 126)

NOTE: Local initiative includes not only ordinances but also resolutions as its appropriate subjects (*Garcia v. COMELEC*, G.R. 111230, September. 30, 1994).

Limitations on local initiative

1. It shall not be exercised for more than once a year.
2. It shall extend only to subjects or matters which are within the legal powers of the *sanggunian* to



enact.

3. If at any time before the initiative is held, the *sanggunian* concerned adopts *in toto* the proposition presented and the local chief executive approves the same, the initiative shall be canceled. However, those against such action may, if they so desire, apply for initiative in the manner herein provided (*LGC, Sec. 124*).

Procedure in conducting local initiative

1. Number of voters who should file petition with the *Sanggunian* concerned:
 - a. Province and cities – not less than 1000 registered voters
 - b. Municipality – at least 100 registered voters
 - c. Barangay – at least 50 registered voters
2. The *sanggunian* concerned has 30 days to act on the petition. If the *sanggunian* does not take any favorable action, the proponents may invoke the powers of initiative, giving notice to *sanggunian*.
3. Proponents will have the following number of days to collect required number of signatures
 - a. Provinces and cities – 90 days
 - b. Municipalities – 60 days
 - c. Barangay – 30 days
4. Signing of petition in a public place, before the election registrar or his designated representatives, in the presence of a representative of the proponent and of the *sanggunian* concerned.
5. Date of initiative is set by COMELEC if the required number of signatures has been obtained (*LGC, Sec. 122*)

Effectivity of proposition

If the proposition is approved by a majority of the votes cast, it will take effect 15 days after certification by the COMELEC (*LGC, Sec. 123*).

Rule of COMELEC over local referendum

The local referendum shall be held under the control and direction of the COMELEC within

- a. Provinces and cities – 60 days
- b. Municipalities – 45 days
- c. *Barangay* – 30 days

The COMELEC shall certify and proclaim the results of the said referendum (*LGC, Sec. 126*).

Rule on repeal, modification and amendment of an ordinance or proposition approve through an initiative and referendum

Any proposition or ordinance approved through an

initiative and referendum shall not be repealed, modified or amended by the *sanggunian* within 6 months from the date of approval thereof.

It may be amended, modified or repealed within 3 years thereafter by a vote of $\frac{3}{4}$ of all its members (*LGC, Sec. 125*).

NOTE: In case of barangays, the period shall be 18 months after the approval thereof (*LGC, Sec. 125*).

CORPORATE POWERS

Corporate powers of LGUs

1. To have continuous succession in its corporate name
2. To sue and be sued
3. To have and use a corporate seal

NOTE: Any new corporate seal or changes on such shall be registered with the DILG.

4. To acquire and convey real or personal property
5. To enter into contracts

NOTE: Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the LGU without prior authorization by the *sanggunian* concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.

6. To exercise such other powers as granted to corporations (*LGC, Sec. 22*)

TO SUE AND BE SUED

Every local government unit, as a corporation, shall have the power to sue and be sued (*LGC, Sec. 22*).

LGUs have the power to sue and be sued. Because of the statutory waiver, LGUs are not immune from suit (*Agra, Amicus Imperiorum Locorum, 2016*).

Suability is not the same as Liability

Even though the rule as to immunity of a state from suit is relaxed, the power of the courts ends when the judgment is rendered. Although the liability of the state has been judicially ascertained, the state is at liberty to determine for itself whether to pay the judgment or not, and execution cannot issue on a judgment against the state. Such statutes do not authorize a seizure of state property to satisfy judgments recovered, and only convey an



implication that the legislature will recognize such judgment as final and make provision for the satisfaction thereof. Thus, where consent to be sued is given by general or special law, the implication thereof is limited only to the resultant verdict on the action before execution of the judgment (*City of Caloocan vs. Hon. Allarde*, G.R. No. 107271, September 10, 2003).

Proper officer to represent the city in court actions

GR: The city legal officer is supposed to represent the city in all civil actions and special proceedings wherein the city or any of its officials is a party.

NOTE: Only the Provincial Fiscal or the Municipal Attorney can represent a province or municipality in lawsuits. This is mandatory. Hence, a private attorney cannot represent a province or municipality.

XPN: Where the position is as yet vacant, the City Prosecutor remains the city's legal adviser and officer for civil cases (*ASEAN Pacific Planners v. City of Urdaneta*, G.R. No. 162525, September 23, 2008).

NOTE: Suit is commenced by the local chief executive, upon authority of the *Sanggunian*, except when the City Councilors, by themselves and as representatives of or on behalf of the City bring the action to prevent unlawful disbursement of City funds (*City Council of Cebu v. Cuizon*, G.R. No. L-28972, Oct. 31, 1972).

Power of LGU to sue on behalf of community it represents

A municipality prejudiced by the action of another municipality is vested with the character of a juridical entity, is a corporation of public interest endowed with the personality to acquire and hold property, contract obligations, and bring civil and criminal actions in accordance with the laws governing its organization, and it is entitled to file claims for the purpose of recovering damages, losses and injuries caused to the community it represents (*Municipality of Mangaldan v. Municipality of Manaoag*, G.R. No. L-11627, Aug. 10, 1918).

Q: Teotico was about to board a jeepney in P. Burgos, Manila when he fell into an uncovered manhole. This caused injuries upon him. Thereafter he sued for damages under Article 2189 of the Civil Code against the City of Manila and its local officials. The City of Manila assailed the decision of the CA on the ground that the charter of Manila states that it shall not be liable for damages caused by the negligence of the city officers in enforcing the charter; that the charter is a special law and shall prevail over the Civil

Code which is a general law; and that the accident happened in national highway. Is the City of Manila liable?

A: YES. It is true that in case of conflict, a special law prevails over a general law; that the charter of Manila is a special law and that the Civil Code is a general law. However, looking at the particular provisions of each law concerned, the provision of the Manila Charter exempting it from liability caused by the negligence of its officers is a general law in the sense that it exempts the city from negligence of its officers in general. Art. 2189 of the NCC provides that provinces, cities, and municipalities liable for the damages caused to a certain person by reason of the "...defective condition of roads, streets, bridges, public buildings, and other-public works under their control or supervision."

Even though it is a national highway, the law contemplates that regardless of whether or not the road is national, provincial, city, or municipal, so long as it is under the City's control and supervision, it shall be responsible for damages by reason of the defective conditions thereof (*City of Manila v. Teotico*, G.R. No. L-23052, January 29, 1968).

Q: May LGU funds and properties be seized under writs of execution or garnishment to satisfy judgments against them?

A:NO. The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimants action only up to the completion of proceedings anterior to the stage of execution and that the power of the Courts ends when the judgment is rendered. Government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments. This is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriations as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects (*Traders Royal Bank v. IAC*, G.R. No. 68514, Dec. 17, 1990).

NOTE: The rule on the immunity of public funds from seizure or garnishment does not apply when the funds sought to be levied under execution are already allocated by law specifically for the satisfaction of the money judgment against the government. In such a case, the monetary judgment may be legally enforced by judicial processes (*City of Caloocan v. Allarde*, G.R. No. 107271, Sept. 10, 2003).



LIABILITY OF LGUs

Scope of municipal liability

Municipal liabilities arise from various sources in the conduct of municipal affairs, both governmental and proprietary.

NOTE: Tests of liability is the nature of task being performed.

Rule on the liabilities of LGUs and their officials

LGUs and their officials are not exempt from liability arising from death or injury to persons or damage to property (*LGC, Sec. 24*).

Liabilities of LGUs (1994, 2009 Bar)

1. LGUs shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision (*New Civil Code, Art. 2189*).

NOTE: LGU is liable even if the road does not belong to it as long as it exercises control or supervision over the said roads.

2. The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains. In which case, Art. 2180 shall be applicable (*New Civil Code, Article 2180 (6)*).
3. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages and the city or municipality shall be subsidiarily responsible therefor (*New Civil Code, Art. 34*).

Bases for municipal liabilities

1. Liability arising from violation of law

NOTE: Liability arising from violation of law such as closing municipal streets without indemnifying persons prejudiced thereby, non-payment of wages to its employees due to lack of funds or other causes or its refusal to abide a temporary restraining order may result in contempt charge and fine.

2. Liability for contracts

NOTE:

- a. LGU is liable provided that the contract is *intra vires* or it is *ultra vires* that is only attended by irregularities, which does not preclude ratification or the application of the doctrine of estoppel.

If it is *ultra vires*, which are entered into beyond the express, implied or inherent powers of the local government unit or do not comply with the substantive requirements of law they are not liable.

- b. A private individual who deals with a municipal corporation is imputed with CONSTRUCTIVE knowledge of the extent of the power or authority of the municipal corporation to enter into contracts.

3. Liability for tort

NOTE: They may be held liable for torts arising from the performance of their private and proprietary functions under the principle of *respondeat superior*. They are also liable for back salaries for employees illegally dismissed/separated or for its refusal to reinstate employees.

Doctrine of Implied Municipal Liability

A municipality may become obligated, upon an implied contract, to pay the reasonable value of the benefits accepted or appropriated by it as to which it has the general power to contract. The doctrine of implied municipal liability has been said to apply to all cases where money or other property of a party is received under such circumstances that the general law, independent of express contract, implies an obligation upon the municipality to do justice with respect to the same (*Province of Cebu v. IAC, G.R. No. 72841, January 29, 1987*).

NOTE: The obligation of a municipal corporation upon the doctrine of an implied contract does not connote an enforceable obligation. Some specific principle or situation of which equity takes cognizance must be the foundation of the claim. The principle of liability rests upon the theory that the obligation implied by law to pay does not originate in the unlawful contract, but arises from considerations outside it. The measure of recovery is the benefit received by the municipal corporation. The province cannot set up the plea that the contract was *ultra vires* and still retain benefits (*Province of Cebu v. IAC, ibid.*).

Tort liability of LGUs

1. LGU-engaged in governmental function– Not



liable

XPN: Unless it's expressly made liable by a statute or its officers acted wantonly or maliciously (*Torio v. Fontanilla, G.R. No. L-29993 October 23, 1978*).

2. LGU-engaged in *proprietary function*– Liable

Q: A collision between a passenger jeepney, sand and gravel truck, and a dump truck driven by Monte and owned by the Municipality of San Fernando occurred which resulted to the death of Jessica, a passenger of the jeepney. The heirs of Jessica instituted an action for damages against the Municipality. Is the municipality liable for the tort committed by its employee?

A: NO. The driver of the dump truck was performing duties or tasks pertaining to his office – he was on his way to get a load of sand and gravel for the repair of San Fernando's municipal streets. The municipality cannot be held liable for the tort committed by its regular employee, who was then engaged in the discharge of *governmental functions*. The death of the passenger -- tragic and deplorable though it may be -- imposed on the municipality no duty to pay monetary compensation (*Municipality of San Fernando v. Hon. Firme, G.R. No. L-52179, April 8, 1991*).

Q: The Municipality of Malasiqui authorized the celebration of town fiesta by way of a resolution and appropriated an amount for the construction of 2 stages. One of the members of the group to perform a play during the fiesta was Fontanilla. Before the dramatic part of the play was reached, the stage collapsed and Fontanilla was pinned underneath resulting to his death. The heirs of Fontanilla filed a complaint against the Municipality. Is the municipality liable?

A: YES. The town fiesta was an exercise of a private or proprietary function of the municipality. Holding a fiesta, even if the purpose is to commemorate a religious or historical event of the town, is in essence an act for the special benefit of the community and not for the general welfare of the public performed in pursuance of a policy of the state. No governmental or public policy of the state is involved in the celebration of a town fiesta (*Municipality of Malasiqui v. Heirs of Fontanilla, G.R. No. L-29993, Oct. 23, 1978*).

NOTE: There can be no hard and fast rule for purposes of determining the true nature of an undertaking or function of a municipality; the surrounding circumstances of a particular case are

to be considered and will be decisive. The basic element, however beneficial to the public the undertaking may be, is that it is governmental in essence; otherwise the function becomes private or proprietary in character (*Municipality of Malasiqui v. Heirs of Fontanilla, ibid.*).

Q: X was elected as Vice Mayor of Dasol, Pangasinan. The *Sangguniang Bayan* adopted Resolution No. 1 which increased the salaries of the Mayor and Municipal Treasurer to P18,636 and P16,044 per annum respectively. However, the Resolution did not provide for an increase in salary of the Vice Mayor despite the fact that such position is entitled to an annual salary of P16,044. X questioned the failure of the *Sangguniang Bayan* to appropriate an amount for the payment of his salary. The *Sangguniang Bayan* increased his salary and enacted a Resolution No. 2 appropriating an amount as payment of the unpaid salaries. However, the Resolution was vetoed by the respondent mayor. Can X avail of damages due to the failure of the respondents to pay him his lawful salary?

A: YES. The Mayor alone should be held liable and not the whole *Sanggunian Bayan*. Respondent Mayor vetoed the Resolution without just cause. While "to veto or not to veto involves the exercise of discretion" as contended by respondents, respondent Mayor, however, exceeded his authority in an arbitrary manner when he vetoed the resolution since there are sufficient municipal funds from which the salary of the petitioner could be paid.

Respondent Mayor's refusal, neglect or omission in complying with the directives of the Provincial Budget Officer and the Director of the Bureau of Local Government that the salary of X be provided for and paid the prescribed salary rate, is reckless and oppressive, hence, by way of example or correction for the public good, respondent Mayor is liable personally to the petitioner for exemplary or corrective damages (*Pilar v. Sangguniang bayan ng Dasol, Pangasinan, G.R. No. 63216, March 12, 1984*).

TO ACQUIRE AND SELL PROPERTY

Property held in trust by LGUs as agents of the State

Properties of municipalities not acquired by its own funds in its private capacity are public property held in trust for the State. Regardless of the source or classification of land in the possession of a municipality, except those acquired with its own funds in its private or corporate capacity, such property is held in trust for the State for the benefit of its inhabitants,



whether it be for government or proprietary purposes. It holds such lands subject to the paramount power of the legislature to dispose of the same, for after all it owes its creation to it as an agent for the performance of a part of it public work, the municipality being but a subdivision or instrumentality thereof for the purposes of local administration (*Salas v. Jarencio*, G.R. No. L-29788, Aug. 30, 1972).

Properties that can be alienated by LGUs

Only properties owned in its private or proprietary capacity (*Province of Zamboanga del Norte v. City of Zamboanga*, G.R. No. L-24440, March 28, 1968).

Art. 424 of the Civil Code lays down the basic principle that properties of public dominion devoted to public use and made available to the public, in general, are outside the commerce of man and cannot be disposed of or leased by the LGU to private persons (*Macasiano v. Diokno*, G.R. No. 97764, Aug. 10, 1992).

Rules on LGU's power to acquire and convey real or personal property

1. In the absence of proof that the property was acquired through corporate or private funds, the presumption is that it came from the State upon the creation of the municipality and, thus, is governmental or public property (*Salas v. Jarencio*, G.R. No. L-29788, Aug. 30, 1972; *Rabuco v. Villegas*, G.R. No. L-24661, Feb. 28, 1974).
2. Town plazas are properties of public dominion; they may be occupied temporarily, but only for the duration of an emergency (*Espiritu v. Municipal Council of Pozorrubio, Pangasinan*, G.R. No. L-11014, January 21, 1958).
3. Public plazas are beyond the commerce of man, and cannot be the subject of lease or other contractual undertaking. And, even assuming the existence of a valid lease of the public plaza or part thereof, the municipal resolution effectively terminated the agreement, for it is settled that the police power cannot be surrendered or bargained away through the medium of a contract (*Villanueva v. Castaneda*, G.R. No. L-61311, Sept. 21, 1987).
4. Public streets or thoroughfares are property for public use, outside the commerce of man, and may not be the subject of lease or other contracts (*Dacanay v. Asistio*, G.R. No. 93654, May 6, 1992).

Documents to support the contract of sale entered into by the LGU

1. Resolution of the *sanggunian* authorizing the local chief executive to enter into a contract of sale. The resolution shall specify the terms and conditions to be embodied in the contract.
2. Ordinance appropriating the amount specified in the contract.
3. Certification of the local treasurer as to availability of funds together with a statement that such fund shall not be disbursed or spent for any purpose other than to pay for the purchase of the property involved (*Jesus is Lord Christian School Foundation, Inc. v. Mun. of Pasig*, G.R. No. 152230, Aug. 9, 2005).

Congress may transfer property to an LGU for public or patrimonial purposes

A city, being a public corporation, is not covered by the constitutional ban on acquisition of alienable public lands. Congress may, by law, transfer public lands to a city, an end user government agency, to be used for municipal purposes, which may be public or patrimonial. Lands thus acquired by the city for a public purpose may not be sold to private parties. However, lands so acquired by a city for a patrimonial purpose may be sold to private parties, including private corporations (*Chavez v. Public Estates Authority*, G.R. No. 133250, Nov. 11, 2003).

TO ENTER INTO CONTRACTS

Requisites

1. The LGU has the express, implied or inherent power to enter into particular contract.
2. The contract is entered into by the proper department board, committee, officer or agent.

NOTE: No contract may be entered into by the local chief executive on behalf of the local government without prior authorization by the *sanggunian* concerned, unless otherwise provided [*LGC, Sec. 22(c)*].

3. The contract must comply with certain substantive requirements:
 - a. Actual appropriation; and
 - b. Certificate of availability of funds
4. The contract must comply with the formal requirements of written contracts. (*e.g. Statute of Frauds*)

NOTE: This includes the power to acquire and convey properties by the LGU through written contracts.

Void contracts of LGUs do not require judicial declaration of nullity



Contracts entered into by a municipality, in violation of existing law, do not require judicial action declaring their nullity. In the case of *Bunye v. Sandiganbayan* (G.R. No. 122058, May 5, 1999), the Supreme Court held that contracts which grant a 25-year lease of the Public Market when the law at that time, BP Blg. 337, limits such leases to a maximum of five years, are void.

Conditions/Requisites under which a local chief executive may enter into a contract in behalf of his government unit

1. The contract must be within the power of the municipality
2. The contract must be entered into by an authorized officer (*e.g. mayor with proper resolution by the Sangguniang Bayan*)
3. There must be appropriation and certificate of availability of funds
4. The contract must conform with the formal requisites of a written contract as prescribed by law; and
5. In some cases the contract must be approved by the President and/or provincial governor (*Revised Adm. Code, Sec. 2068 and Sec. 2196*).

Contracts validly entered into by previous chief executive bind successor-in-office

When there is a perfected contract executed by the former Governor, the succeeding governor cannot revoke or renounce the same without the consent of the other party. The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his/her mind or disavow and go back upon his/her own acts, or to proceed contrary thereto, to the prejudice of the other party (*GSIS v. Province of Tarlac*, G.R. No. 157860, December 1, 2003).

Prior authorization by municipal council

Under Section 22(c) of the LGC, the local chief executive cannot enter into a contract in behalf of the LGU without prior authorization from the *sanggunian* concerned. Such authorization may be in the form of an appropriation ordinance passed for the year which specifically covers the project, cost, or contract entered into by the LGU.

However, this rule does not apply where the

LGU operated on a reenacted budget. In case of a reenacted budget, only the annual appropriation for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted. New contracts entered into by the local chief executive must therefore have prior authorization from the *sanggunian* (*Quisumbing v. Garcia*, G.R. No. 175527, December 8, 2008).

ULTRA VIRES CONTRACTS

Ultra vires contracts

Ultra vires contracts are those which:

- a. are entered into beyond the express, implied or inherent powers of the LGU; and
- b. do not comply with the substantive requirements of law *e.g.*, when expenditure of public funds is to be made, there must be an actual appropriation and certificate of availability of funds (*Land Bank of the Philippines v. Cacayuran*, G.R. No. 191667, April 17, 2013).

NOTE: Such are null and void and cannot be ratified or validated.

Instance when a defective municipal contract may be ratified

Ratification of defective municipal contracts is possible only when there is non-compliance with the requirements of authority of the officer entering into the contract and/or conformity with the formal requisites of a written contract as prescribed by law. Ratification may either be expressed or implied.

NOTE: An act attended only by an irregularity, but remains within the municipality's power, is considered as an *ultra vires* act subject to ratification and/or validation.

Examples:

- a. Those entered into by the improper department, board, officer or agent;
- b. Those that not comply with the formal requirements of a written contract *e.g.*, the Statute of Frauds (*Land Bank of the Philippines v. Cacayuran, supra.*).

Contracts entered into by a local chief executive may be subject to constructive ratification

A loan agreement entered into by the provincial governor without prior authorization from the *Sangguniang Panlalawigan* is unenforceable. The *Sanggunian's* failure to impugn the contract's



validity despite knowledge of its infirmity is an implied ratification that validates the contract (*Ocampo v. People, G.R. No. 156547-51 & 156382-85, February 4, 2008*).

Doctrine of estoppel does not apply against a municipal corporation to validate an invalid contract

The *doctrine of estoppel* cannot be applied as against a municipal corporation to validate a contract which it has no power to make, or which it is authorized to make only under prescribed conditions, within prescribed limitations, or in a prescribed mode or manner, although the corporation has accepted the benefits thereof and the other party has fully performed its part of the agreement, or has expended large sums in preparation for performance. A reason frequently assigned for this rule is that to apply the doctrine of estoppel against a municipality in such a case would be to enable it to do indirectly what it cannot do directly (*In Re: Pechueco Sons Company v. Provincial Board of Antique, G.R. No. L-27038, Jan. 30, 1970*).

Authority to negotiate and secure grants

The local chief executive may, upon authority of the *sanggunian*, negotiate and secure financial grants or donations in kind, in support of the basic services or facilities enumerated under Sec. 17 of LGC, from local and foreign assistance agencies without necessity of securing clearance or approval from any department, agency, or office of the national government or from any higher LGU; Provided, that projects financed by such grants or assistance with national security implications shall be approved by the national agency concerned (*LGC, Sec. 23*).

Q: The City Council of Calamba issued several resolutions authorizing Mayor Tiama to negotiate with landowners within the vicinity of Barangays Real, Halang, and Uno, for a new city hall site and to purchase several lots and to execute, sign and deliver the required documents. Mayor Tiama then entered into MOA, Deed of Sale, Deed of Mortgage, and Deed of Assignment.

Thereafter, Ong, a member of the City Council, questioned the lack of ratification by the City Council of the contracts, among others. Should all the documents pertaining to the purchase of the lots bear the ratification by the City Council of Calamba?

A: NO. Sec. 22(c), LGC, provides: (c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of

the LGU without prior authorization by the *sanggunian* concerned. Clearly, when the local chief executive enters into contracts, the law speaks of prior authorization or authority from the *Sangguniang Panlungsod* and not ratification. It cannot be denied that the City Council issued Res. 280 authorizing Mayor Tiama to purchase the subject lots.

NOTE: As aptly pointed out by the Ombudsman, ratification by the City Council is not a condition *sine qua non* for a mayor to enter into contracts. With the resolution issued by the *Sangguniang Panlungsod*, it cannot be said that there was evident bad faith in purchasing the subject lots. The lack of ratification alone does not characterize the purchase of the properties as one that gave unwarranted benefits to Pamana or Prudential Bank or one that caused undue injury to Calamba City (*Vergara v. Ombudsman, G.R. No. 174567, March 12, 2009*).

Competitive or Public Bidding

Refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract [*R.A. 9184, IRR, Sec 5 (h)*].

Requirement of public bidding

In the award of government contracts, the law requires competitive public bidding. It is aimed to protect the public interest by giving the public the best possible advantages thru open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts (*Garcia v. Burgos, G.R. No. 124130, June 29, 1998*).

Failure of bidding

When any of the following occurs:

1. There is only one offeror
2. When all the offers are non-complying or unacceptable (*Bagatsing v. Committee on Privatization, G.R. No. 112399, July 14, 1995*).

SETTLEMENT OF BOUNDARY DISPUTE

(1999, 2005, 2010 Bar)

Boundary Dispute

When a portion or the whole of the territorial area of an LGU is claimed by two or more LGUs.



Jurisdictional Responsibility for Settlement of Boundary Dispute

Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:

- (a) Boundary disputes involving two (2) or more barangays in the same city or municipality shall be referred for settlement to the *sangguniang panlungsod* or *sangguniang bayan* concerned.
- (b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the *sangguniang panlalawigan* concerned.
- (c) Boundary disputes involving municipalities or component cities of different provinces shall be jointly referred for settlement to the *sanggunians* of the provinces concerned.
- (d) Boundary disputes involving a component city or municipality on the one hand and a highly urbanized city on the other, or two (2) or more highly urbanized cities, shall be jointly referred for settlement to the respective *sanggunians* of the parties.
- (e) In the event the *sanggunian* fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the *sanggunian* concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above (LGC, Sec. 118).

Procedure for Settling Boundary Disputes

Article 17, Rule III of the Rules and Regulations of the LGC outlines the procedures governing boundary disputes, which succinctly includes the filing of the proper petition, and in case of failure to amicably settle, a formal trial will be conducted and a decision will be rendered thereafter. An aggrieved party can appeal the decision of the *sanggunian* to the appropriate RTC (*Calanza v. PICOP*, G.R. No. 146622, April 24, 2009).

Said rules and regulations state:

- (a) *Filing of petition* - The *sanggunian* concerned may initiate action by filing a petition, in the form of a resolution, with the *sanggunian* having jurisdiction over the dispute.
- (b) *Contents of petition* - The petition shall state the grounds, reasons or justifications therefore.
- (c) *Documents attached to petition* - The petition shall be accompanied by:
 1. Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU;

2. Provincial, city, municipal, or barangay map, as the case may be, duly certified by the LMB.
 3. Technical description of the boundaries of the LGUs concerned;
 4. Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody;
 5. Written declarations or sworn statements of the people residing in the disputed area; and
 6. Such other documents or information as may be required by the *sanggunian* hearing the dispute.
- (d) *Answer of adverse party* - Upon receipt by the *sanggunian* concerned of the petition together with the required documents, the LGU or LGUs complained against shall be furnished copies thereof and shall be given fifteen (15) working days within which to file their answers.
 - (e) *Hearing* - Within five (5) working days after receipt of the answer of the adverse party, the *sanggunian* shall hear the case and allow the parties concerned to present their respective evidences.
 - (f) *Joint hearing* - When two or more *sanggunians* jointly hear a case, they may sit en banc or designate their respective representatives. Where representatives are designated, there shall be an equal number of representatives from each *sanggunian*. They shall elect from among themselves a presiding officer and a secretary. In case of disagreement, selection shall be by drawing lot.
 - (g) *Failure to settle* - In the event the *sanggunian* fails to amicably settle the dispute within sixty (60) days from the date such dispute was referred thereto, it shall issue a certification to the effect and copies thereof shall be furnished the parties concerned.
 - (h) *Decision* - Within sixty (60) days from the date the certification was issued, the dispute shall be formally tried and decided by the *sanggunian* concerned. Copies of the decision shall, within fifteen (15) days from the promulgation thereof, be furnished the parties concerned, DILG, local assessor, COMELEC, NSO, and other NGAs concerned.
 - (i) *Appeal* - Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the dispute by filing therewith the appropriate pleading, stating among others, the nature of the dispute, the decision of the *sanggunian* concerned and the reasons for appealing therefrom. The Regional Trial Court shall decide the case within one (1) year from the filing thereof. Decisions on boundary



disputes promulgated jointly by two (2) or more *sangguniang panlalawigans* shall be heard by the Regional Trial Court of the province, which first took cognizance of the dispute.

Q: (1.) There was a boundary dispute between Dueñas, a municipality, and Passi, an independent component city, both of the same province. State how the two local government units should settle their boundary dispute.

2.) The Sangguniang Bayan of the Municipality of Santa, Ilocos Sur passed Resolution No. 1 authorizing its Mayor to initiate a petition for the expropriation of a lot owned by Christina as site for its municipal sports center. This was approved by the Mayor. However, the Sangguniang Panlalawigan of Ilocos Sur disapproved the Resolution as there might still be other available lots in Santa for a sports center. Nonetheless, the Municipality of Santa, through its Mayor, filed a complaint for eminent domain. Christina opposed this on the following grounds:

(a) The Municipality of Santa has no power to expropriate;

(b) Resolution No. 1 has been voided since the Sangguniang Panlalawigan disapproved it for being arbitrary; and

(c) The Municipality of Santa has other and better lots for that purpose. Resolve the case with reasons. (2005 Bar)

A: Since Passi is an independent component city, while Duenas is a municipality, the procedure in Section 118 of the Local Government Code does not apply to them. Since there is no law providing for the jurisdiction of any court or quasi-judicial agency over the settlement of their boundary dispute, the Regional Trial Court has jurisdiction to adjudicate it. Under Section 19 (6) of the Judiciary Reorganization Act, the Regional Trial Court has exclusive original jurisdiction in all cases not within the exclusive jurisdiction of any court or quasi-judicial agency (*Municipality of Kananga v. Madrono, G.R. No. 141375. April 30, 2003*).

SUCCESSION OF ELECTIVE OFFICIALS

Vacancy

Absence should be reasonably construed to mean 'effective' absence, that is, one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his/her office. There is no vacancy whenever the office is occupied by a legally qualified incumbent. *A sensu contrario*, there

is a vacancy when there is no person lawfully authorized to assume and exercise at present the duties of the office (*Gamboa, Jr. v. Aguirre, G.R. No. 134213, July 20, 1999*).

Classes of vacancies in the elective post

Permanent Vacancy	Temporary Vacancy
Arises when an elected local official:	Arises when an elected official is temporarily incapacitated to perform his duties due to legal or physical reason such as:
1. Fills a higher vacant office; or	1. Physical sickness;
2. Refuses to assume office; or	2. Leave of absence;
3. Fails to qualify; or	3. Travel abroad; or
4. Dies; or	4. Suspension from office. (<i>LGC, Sec. 46</i>)
5. Removed from office; or	
6. Voluntarily resigns; or	
7. Permanently incapacitated to discharge the functions of his office. (<i>LGC, Sec. 44</i>)	

Filling of vacancy

- Automatic succession
- By appointment (*LGC, Sec. 45*).

Rules of succession in case of permanent vacancies (1995, 1996, 2002 Bar)

- A. In case of permanent vacancy in:
- Office of the Governor
 - Vice-Governor; in his absence,
 - Highest ranking Sanggunian member; in case of the permanent disability of highest ranking Sanggunian member,
 - Second highest ranking Sanggunian member
 - Office of the Mayor
 - Vice-Mayor; in his absence,
 - Highest ranking Sanggunian member; in case of the permanent disability of highest ranking Sanggunian member,
 - Second highest ranking Sanggunian member
 - Office of the Vice Governor or Vice-Mayor
 - Highest ranking Sanggunian member; in case of the permanent disability of highest ranking Sanggunian member,

NOTE: The highest ranking municipal councilor's succession to the office of vice-mayor cannot be considered a voluntary



renunciation of his office as councilor, since it occurred by operation of law (*Montebon v. COMELEC, G.R. No. 180444, April 8, 2008*).

4. Second highest ranking *Sanggunian* member. Office of the *Punong Barangay*
 - a. Highest ranking *Sanggunian* member; in case of the permanent disability of highest ranking *Sanggunian* member,
 - b. Second highest ranking *Sanggunian* member

NOTE: For purposes of succession, ranking in the *Sanggunian* shall be determined on the basis of the proportion of the votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election [*LGC, Sec. 44 (d)(3)*].

B. In case automatic succession is not applicable and there is vacancy in the membership of the *sanggunian*, it shall be filled up by appointment in the following manner:

1. *The President, through the Executive Secretary*, shall appoint the political nominee of the local chief executive for the *sangguniang panlalawigan* and *panlungsod* of highly urbanized cities and independent component cities [*LGC, Sec. 45 (a)(1)*].
2. *The Governor* shall appoint the political nominees for the *sangguniang panlungsod* of component cities and the *sangguniang bayan* concerned [*LGC, Sec. 45 (a)(2)*].
3. *The city or municipal mayor* shall appoint the recommendation of the *sangguniang barangay* concerned [*LGC, Sec. 45 (a)(3)*].

GR: The successor (by appointment) should come from the same political party as the *sanggunian* member whose position has become vacant.

XPN: In the case of vacancy in the *Sangguniang barangay*.

The reason for the rule is to maintain the party representation as willed by the people in the election.

Hold-over status

In case of failure of elections involving barangay officials, the incumbent officials shall remain in office in a hold-over capacity pursuant to R.A. 9164 (*Adap v. COMELEC, G.R. No. 161984, February 21, 2007*).

The "last vacancy" in the *Sanggunian*

It refers to the vacancy created by the elevation of the member formerly occupying the next higher in rank, which in turn also had become vacant by any of the causes enumerated.

Q: In the 1997 local elections Calimlim was elected as Mayor, Aquino as Vice-Mayor and Tamayo as the highest ranking member of the *Sanggunian*. In 1999, Mayor Calimlim died, thus Vice-Mayor Aquino succeeded him as Mayor. Accordingly, the highest-ranking member of the *Sanggunian*, Tamayo, was elevated to the position of the Vice-Mayor. Since a vacancy occurred in the *Sangguniang Bayan* by the elevation of petitioner Tamayo to the office of the Vice-Mayor, Governor Agbayani appointed Navarro as Member of the *Sangguniang Bayan*. Navarro belonged to the same political party as that of Tamayo.

Respondents argue that it was the former vice-mayor Aquino who created the permanent vacancy in the *Sanggunian* and thus, the appointee must come from the former vice mayor's political party. Petitioners, however, contend that it was the elevation of Tamayo to the position of vice-mayor which resulted in a permanent vacancy and thus, the person to be appointed to the vacated position should come from the same political party as that of Tamayo, in this case Navarro. Are the respondents correct?

A: NO. With the elevation of Tamayo to the position of Vice-Mayor, a vacancy occurred in the *Sanggunian* that should be filled up with someone who should belong to the political party of petitioner Tamayo. Under Sec 44 of the LGC, a permanent vacancy arises when an elective official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office. Sec 45 (b) of the same law provides that "only the nominee of the political party under which the *Sanggunian* member concerned has been elected and whose elevation to the position next higher in rank created the last vacancy in the *Sanggunian* shall be appointed in the manner herein provided. The appointee shall come from the political party as that of the *Sanggunian* member who caused the vacancy..." The term "last vacancy" is thus used in Sec. 45(b) to differentiate it from the other vacancy previously created. The term "by no means" refers to the vacancy in the No. 8 position which occurred with the elevation of 8th placer to the 7th position in the *Sanggunian*. Such construction will result in absurdity (*Navarro v. CA, G.R. No. 141307, March 28, 2001*).



NOTE: In case of vacancy in the representation of the youth and the *barangay* in the *Sanggunian*, it shall be filled automatically by the official next in rank of the organization concerned. [LGC, Sec. 45(d)]

Rules on temporary vacancies (2002 Bar)

1. In case of temporary vacancy of the post of the local chief executive (leave of absence, travel abroad, and suspension): Vice-Governor, City or Municipal Vice Mayor, or the highest ranking *sangguniang barangay* shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned.

NOTE:

GR: The acting Governor or Mayor cannot exercise the power to appoint, suspend or dismiss employees.

XPN: If the period of temporary incapacity exceeds 30 working days.

2. If travelling within the country, outside his jurisdiction, for a period not exceeding 3 days, he may designate in writing the officer-in-charge for the same office. The OIC cannot exercise the power to appoint, suspend or dismiss employee.
3. If without said authorization, the Vice-Governor, City or Municipal Vice-Mayor or the highest ranking *sangguniang barangay* member shall assume the powers, duties and functions of the said office on the 4th day of absence (LGC, Sec. 46).

Termination of temporary incapacity

1. Upon submission to the appropriate *sanggunian* of a written declaration by the local chief executive concerned that he has reported back to office, if the temporary incapacity was due to
 - a. Leave of absence;
 - b. Travel abroad; and
 - c. Suspension
2. Upon submission by the local chief executive of the necessary documents showing that the legal causes no longer exist, if the temporary incapacity was due to legal reasons [LGC, Sec. 46(b)].

Rules on consecutiveness of terms and/or involuntary interruption:

1. When a permanent vacancy occurs in an elective

position and the official merely assumed the position pursuant to the rules on succession under the LGC, then his service for the unexpired portion of the term of the replaced official cannot be treated as one full term as contemplated under the subject constitutional and statutory provision that service cannot be counted in the application of any term limit. If the official runs again for the same position he held prior to his assumption of the higher office, then his succession to said position is by operation of law and is considered an involuntary severance or interruption.

2. An elective official, who has served for three consecutive terms and who did not seek the elective position for what could be his fourth term, but later won in a recall election, had an interruption in the continuity of the official's service. For, he had become in the interim, i.e., from the end of the 3rd term up to the recall election, a private citizen.

3. The abolition of an elective local office due to the conversion of a municipality to a city does not, by itself, work to interrupt the incumbent official's continuity of service.

4. Preventive suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office during this period.

5. When a candidate is proclaimed as winner for an elective position and assumes office, his term is interrupted when he loses in an election protest and is ousted from office, thus disabling him from serving what would otherwise be the unexpired portion of his term of office had the protest been dismissed (*Lonzanida and Dizon*). The break or interruption need not be for a full term of three years or for the major part of the 3-year term; an interruption for any length of time, provided the cause is involuntary, is sufficient to break the continuity of service.

6. When an official is defeated in an election protest and said decision becomes final after said official had served the full term for said office, then his loss in the election contest does not constitute an interruption since he has managed to serve the term from start to finish. His full service, despite the defeat, should be counted in the application of term limits because the nullification of his proclamation came after the expiration of the term (*Abundo v. COMELEC, G.R. No. 201716, Jan. 8, 2013*).

DISCIPLINE OF LOCAL OFFICIALS

ELECTIVE OFFICIALS



Grounds

An elective local official may be disciplined, suspended or removed from office on any of the following grounds:

1. Disloyalty to the Republic of the Philippines

NOTE: An administrative, not criminal, case for disloyalty to the Republic only requires substantial evidence (*Aguinaldo v. Santos, G.R. No. 94115, August 21, 1992*).

2. Culpable violation of the Constitution
3. Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty

NOTE: Acts of lasciviousness cannot be considered misconduct in office, and may not be the basis of an order of suspension. To constitute a ground for disciplinary action, the mayor charged with the offense must be convicted in the criminal action (*Palma v. Fortich, G.R. No. L-59679, January 29, 1987*).

Before the provincial governor and board may act and proceed against the municipal official, a conviction by final judgment must precede the filing by the provincial governor of the charges and trial by the provincial board [*Mindano v. Silvana, et al., 97 Phil. 144-145 (1955)*].

4. Commission of any offense involving moral turpitude, or an offense punishable by at least *prision mayor*
5. Abuse of authority
6. Unauthorized absence for fifteen (15) consecutive working days, in the case of local chief executives and four (4) consecutive sessions in case of members of the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, and sangguniang barangay.
7. Application for, or acquisition of, foreign citizenship or residence, or the status of an immigrant of another country
8. Such other grounds as may be provided by the Code and other laws (*LGC, Sec. 60*).

JURISDICTION

An elective local official may be removed from office on any of the grounds enumerated above only by an order from the proper court. The Office of the President does not have any power to remove elected officials, since such power is

exclusively vested in the proper courts as expressly provided for in the last paragraph of Sec. 60 of LGC (*Salalima v. Guingona, G.R. No. 117589-92, May 22, 1996*).

PREVENTIVE SUSPENSION

Preventive suspension may be imposed:

1. After the issues are joined;
2. When the evidence of guilt is strong;
3. Given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence [*LGC, Sec. 63(b)*].

NOTE: It is immaterial that no evidence has been adduced to prove that the official may influence possible witnesses or may tamper with the public records. It is sufficient that there exists such a possibility (*Hagad v. Gozo-Dadole, G.R. No. 108072, December 12, 1995*).

Persons who can impose preventive suspension

Person Authorized to Impose Suspension	Respondent Local Official
President	Elective official of a province, highly urbanized or independent component city
Governor	Elective official of component city or municipality
Mayor	Elective official of barangay [<i>LGC, Sec. 63(a)</i>]

Rules on preventive suspension

1. A single preventive suspension shall not extend beyond 60 days (*Rios v. Sandiganbayan, G.R. No. 129913, September 26, 1997*).
2. In the event that there are several administrative cases filed, the elective official cannot be preventively suspended for more than 90 days within a single year on the same ground or grounds existing and known at the time of his first suspension [*LGC, Sec. 63(b)*].

Preventive suspension under RA 6770



(Ombudsman Act of 1989) vs. Preventive suspension under RA 7160 (LGC)

Preventive Suspension under RA 6770	Preventive Suspension under the LGC
Requirements	
<ol style="list-style-type: none"> 1. The evidence of guilt is strong; and 2. That any of the following circumstances are present: <ol style="list-style-type: none"> a. The charge against the officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; b. The charges would warrant removal from office; or c. The respondent's continued stay in office may prejudice the case filed against him. 	<ol style="list-style-type: none"> 1. There is reasonable ground to believe that the respondent has committed the act or acts complained of; 2. The evidence of guilt is strong; 3. The gravity of the offense so warrants 4. The continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence
Maximum period	
6 months	60 days

(*Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995).

Power of the Ombudsman under RA 6770 to conduct administrative investigation

The Ombudsman and the Office of the President have concurrent jurisdiction to conduct administrative investigations over elective officials (*Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995).

Signing of preventive suspension order

The Ombudsman, as well as his Deputy, may sign an order preventively suspending officials. Also, the length of the period of suspension within the limits provided by law and the evaluation of the strength of the evidence both lie in the discretion of the Ombudsman (*Castillo-Co v. Barbers*, G.R. No. 129952, June 16, 1998).

Effect of an appeal on the preventive suspension ordered by the Ombudsman

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course (*Office of the Ombudsman v. Samaniego*, G.R. No. 175573, Oct. 5, 2010).

REMOVAL

Removal

Removal imports the forcible separation of the incumbent before the expiration of his term and can be done only for causes as provided by law (*Dario v. Mison*, G.R. No. 81954, Aug. 8, 1989).

NOTE: The unjust removal or non-compliance with the prescribed procedure constitutes reversible error and this entitles the officer or employee to reinstatement with back salaries and without loss of seniority rights.

Sangguniang Panlungsod and Sangguniang Bayan have no power to remove elective officials.

The pertinent legal provisions and cases decided by this Court firmly establish that the Sangguniang Bayan is not empowered to do so. The most extreme penalty that the Sangguniang Panlungsod or Sangguniang Bayan may impose on the erring elective barangay official is suspension; if it deems that the removal of the official from service is warranted, then it can resolve that the proper charges be filed in court. The courts are exclusively vested with the power to remove elective officials under Section 60 of the Local Government Code (*Sangguniang Barangay of Don Mariano Marcos v. Martinez*, G.R. No. 170626, March 3, 2008).

Resignation of public elective officials

Resignation of elective officials shall be deemed effective only upon acceptance by the following authorities:

1. *The President* – in case of Governors, Vice-Governors, and Mayors and Vice-Mayors of highly urbanized cities and independent and component cities
2. *The Governor* – in the case of municipal



Mayors and Vice-Mayors, city Mayors and Vice-Mayors of component cities

3. *The Sanggunian concerned* – in case of sanggunian members
4. *The City or Municipal Mayor* – in case of barangay officials (*LGC, Sec. 82*)

NOTE: The resignation shall be deemed accepted if not acted upon by the authority concerned within 15 working days from receipt thereof. Irrevocable resignations by sanggunian members shall be deemed accepted upon representation before an open session of the sanggunian concerned and duly entered in its records, except where the sanggunian members are subject to recall elections or to cases where existing laws prescribed the manner of acting upon such resignations [*LGC, Sec. 82(c)(d)*].

ADMINISTRATIVE APPEAL

Rule on administrative appeals

Decisions in administrative cases may, within 30 days from receipt thereof, be appealed to the following:

1. *The Sangguniang Panlalawigan*, in the case of decisions of the *Sangguniang Panlungsod* of component cities and the *Sangguniang Bayan*; and
2. The Office of the President, in the case of decisions of the *Sangguniang Panlalawigan* and the *Sangguniang Panlungsod* of Highly Urbanized Cities and Independent Component Cities (*LGC, Sec. 67*).

NOTE: Decisions of the Office of the President shall be final and executory.

Persons authorized to file administrative complaint

1. Any private individual or any government officer or employee by filing a verified complaint;
2. Office of the President or any government agency duly authorized by law to ensure that LGUs act within their prescribed powers and functions (*Rule 3, Sec. 1, AO 23, December 17, 1992*).

A verified complaint shall be filed with the following:

1. *Office of the President* – Against elective official of provinces, highly urbanized cities, independent component cities, or component cities.

NOTE: It may be noted that the Constitution places local governments under the

supervision of the Executive. Likewise, the Constitution allows Congress to include in the LGC provisions for removal of local officials, which suggests that Congress may exercise removal powers. Note also that legally, supervision is not incompatible with disciplinary action (*Ganzon v. CA, G.R. No. 93252, Aug. 5, 1991*).

Under AO 23, the President has delegated the power to investigate complaints to the Secretary of Interior and Local Government. This is valid delegation because what is delegated is only the power to investigate, not the power to discipline. Besides, the power of the Secretary of Interior and Local Government is based on the “alter-ego” principle (*Joson v. Torres, G.R. No. 131255, May 20, 1998*).

2. *Sangguniang Panlalawigan* – Elective officials of municipalities;

NOTE: Decision may be appealed to the Office of the President

3. *Sangguniang Panglungsod* or *Bayan* – Elective barangay officials (*LGC, Sec. 61*)

NOTE: Decision shall be final and executory.

DOCTRINE OF CONDONATION

(Correlate discussion under Law on Public Officers)

Basic Postulate

An elective official’s re-election cuts off the right to remove him for an administrative offense committed during a prior term.

History of the Doctrine

It is a jurisprudential creation that originated from the 1959 case of *Pascual v. Hon. Provincial Board of Nueva Ecija*, which was therefore decided under the 1935 Constitution. As there was no legal precedent on the issue at that time, the Supreme Court, in *Pascual*, resorted to American authorities. The conclusion is at once problematic since the Supreme Court has now uncovered that there is really no established weight of authority in the US favoring the doctrine of condonation. In fact, as pointed out during the oral arguments of *Ombudsman Carpio-Morales v. Binay, Jr.*, at least seventeen (17) states in the US have abandoned the condonation doctrine.

Abandonment of the Doctrine

To begin with, the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as



mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. In this jurisdiction, liability arising from administrative offenses may be condoned by the President in light of Section 19, Article VII of the 1987 Constitution which was interpreted in *Llamas v. Orbos* to apply to administrative offenses.

Also, it cannot be inferred from Section 60 of the LGC that the grounds for discipline enumerated therein cannot anymore be invoked against an elective local official to hold him administratively liable once he is re-elected to office. In fact, Section 40 (b) of the LGC precludes condonation since in the first place, an elective local official who is meted with the penalty of removal could not be re-elected to an elective local position due to a direct disqualification from running for such post. In similar regard, Section 52 (a) of the Revised Rules on Administrative Cases in the Civil Service imposes a penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service.

Reading the 1987 Constitution together with the above-cited legal provisions now leads the Supreme Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.

NOTE: The Court's abandonment of the condonation doctrine should be **PROSPECTIVE** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Hence, while the future may ultimately uncover the doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Consequently, people's reliance thereupon should be respected (*Conchita Carpio-Morales v. Court of Appeals*, G.R. No. 217126-27, November 10, 2015).

APPOINTIVE OFFICIALS

Appointive Officials and the Civil Service Commission

The authority granted by the Civil Service Commission (CSC) to a city government to "take final action" on all its appointments did not deprive the CSC of its authority and duty to review appointments.

The CSC is empowered to take appropriate action on all appointments and other personnel actions. Such power includes the authority to recall appointments initially approved in disregard of applicable provisions of the Civil Service law and regulations (*Nazareno v. City of Dumaguete*, G.R. No. 181559, October 2, 2009).

NOTE: The municipal mayor, being the appointing authority, is the real party in interest to challenge the CSC's disapproval of the appointment of his/her appointee. The CSC's disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. The appointing authority must have the right to contest the disapproval (*Dagadag v. Tongnawa*, G.R. Nos. 161166-67, February 3, 2005).

Preventive suspension of appointive local officials and employees

The local chief executives may preventively suspend, for a period not exceeding sixty (60) days, any subordinate official or employee under his authority pending investigation if the charge against such official or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty, or if there is reason to believe that the respondent is guilty of the charges which would warrant his removal from the service (*LGC, Sec. 85*).

Imposable penalties

Except as otherwise provided by law, the local chief executive may impose the penalty of:

1. Removal from service
2. Demotion in rank
3. Suspension for not more than one (1) year without pay
4. Fine in an amount not exceeding six (6) months' salary
5. Reprimand and otherwise discipline subordinate officials and employees under his jurisdiction

NOTE: If the penalty imposed is suspension without pay for not more than thirty (30) days, his decision shall be final.

If the penalty imposed is heavier than suspension of thirty(30) days, the decision shall be appealable to the Civil Service Commission, which shall decide the appeal within thirty (30) days from receipt thereof (*LGC, Sec. 87*).

Q: Salumbides and Glenda were appointed as Municipal Legal Officer/Administrator and Municipal Budget Officer, respectively. A complaint was filed with the Office of the Ombudsman against Salumbides and Glenda. They urge the Court to expand the settled



doctrine of condonation to cover coterminous appointive officials who were administratively charged along with the re-elected official/appointing authority with infractions allegedly committed during their preceding term. They contend that the non-application of the condonation doctrine to *appointive* officials violates the right to equal protection of the law. Is the contention tenable?

A. NO. In the recent case of *Quinto v. COMELEC*, it discussed the material and substantive distinctions between elective and appointive officials that could well apply to the doctrine of condonation. It is the will of the populace, not the whim of one person who happens to be the appointing authority, which could extinguish an administrative liability. Since Salumbides and Glendahold appointive positions, they cannot claim the mandate of the electorate. The people cannot be charged with the presumption of full knowledge of the life and character of each and every probable appointee of the elective official ahead of the latter's actual reelection. There is neither subversion of the sovereign will nor disenfranchisement of the electorate to speak of, in the case of reappointed coterminous employees (*Salumbides v. Office of the Ombudsman*, G.R. No. 180917, April 23, 2010).

RECALL

(2000, 2002, 2008, 2010 Bar)

It is a mode of removal of a public officer, by the people, before the end of his term. The people's prerogative to remove a public officer is an incident of their sovereign power, and in the absence of constitutional restraint, the power is implied in all governmental operations (*Garcia v. COMELEC*, G.R. No. 111511, Oct. 5, 1993).

NOTE: All expenses incident to recall elections shall be borne by the COMELEC. For this purpose, the annual General Appropriations Act (GAA) shall include a contingency fund at the disposal of the COMELEC for the conduct of recall elections (*LGC, Sec. 75*).

Q: Goh filed before the COMELEC a recall petition against Mayor Bayron due to loss of trust and confidence. On 1 April 2014, the COMELEC promulgated Resolution No. 9864 which found the recall petition sufficient in form and substance, but suspended the funding of any and all recall elections until the resolution of the funding issue. Petitioner submits that the same is a grave abdication and wanton betrayal of the constitutional mandate of the COMELEC and a grievous violation of the sovereign power of the people. What Resolution Nos. 9864 and 9882

have given with one hand (the affirmation of the sufficiency of the Recall Petition), they have taken away with the other (the issue of lack funding). The COMELEC suspended the holding of a recall election supposedly through lack of funding. Did the COMELEC gravely abuse its discretion when it suspended the recall election?

A: YES. The COMELEC committed grave abuse of discretion in issuing Resolution Nos. 9864 and 9882. The 2014 GAA provides the line item appropriation to allow the COMELEC to perform its constitutional mandate of conducting recall elections. There is no need for supplemental legislation to authorize the COMELEC to conduct recall elections for 2014. Considering that there is an existing line item appropriation for the conduct of recall elections in the 2014 GAA, we see no reason why the COMELEC is unable to perform its constitutional mandate to "enforce and administer all laws and regulations relative to the conduct of xxx recall." Should the funds appropriated in the 2014 GAA be deemed insufficient, then the COMELEC Chairman may exercise his authority to augment such line item appropriation from the COMELEC's existing savings, as this augmentation is expressly authorized in the 2014 GAA. Resolution No. 9864 is therefore partially reverse and set aside insofar as it directed the suspension of any and all proceedings in the recall petition (*Goh v. Bayron*, G.R. No. 212584, November 25, 2014).

Ground for recall

The only ground for recall of local government officials is *loss of confidence*. It is not subject to judicial inquiry. The Court ruled that 'loss of confidence' as a ground for recall is a political question (*Garcia v. COMELEC*, G.R. No. 111511, Oct. 5, 1993).

This means that the people may petition to recall any local elective officials without specifying any particular ground except loss of confidence. There is no need for them to bring up any charge of abuse or corruption against the local elective officials who are the subject of any recall petition.

Recall initiation (2002 Bar)

The Recall of any elective provincial, city, municipal or barangay official shall be commenced by a petition of a registered voter in the LGU concerned and supported by the registered voters in the LGU concerned during the election in which the local official sought to be recalled was elected subject to the following percentage requirements:

- a. At least twenty-five percent (25%) in the case LGUs with a voting population of not more than twenty thousand (20,000);



- b. At least twenty percent (20%) in the case of LGUs with a voting population of at least twenty thousand (20,000) but not more than seventy-five thousand (75,000): Provided, That in no case shall the required petitioners be less than five thousand (5,000);
- c. At least fifteen percent (15%) in the case of LGUs with a voting population of at least seventy-five thousand (75,000) but not more than three hundred thousand (300,000): Provided, however, That in no case shall the required number of petitioners be less than fifteen thousand (15,000); and
- d. At least ten percent (10%) in the case of LGUs with a voting population of over three hundred thousand (300,000): Provided, however, that in no case shall the required petitioners be less than forty-five thousand (45,000) (*LGC, Sec. 70, as amended by RA 9244*).

NOTE: By virtue of RA 9244, Secs. 70 and 71 of the LGC were amended, and the Preparatory Recall Assembly has been eliminated as a mode of instituting recall of elective local government officials.

All pending petitions for recall initiated through the Preparatory Recall Assembly shall be considered *dismissed* upon the effectivity of RA 9244 (*Approved February 19, 2004*).

Recall process

1. Petition of a registered voter in the LGU concerned, supported by percentage of registered voters during the election in which the local official sought to be recalled was elected.
2. Within 15 days after filing, COMELEC must certify the sufficiency of the required number of signatures.

NOTE: Failure to obtain required number automatically nullifies petition.

3. Within 3 days of certification of sufficiency, COMELEC shall provide the official with copy of petition and shall cause its publication for three weeks (once a week) in a national newspaper and a local newspaper of general circulation. Petition must also be posted for 10 to 20 days at conspicuous places (*LGC, Sec. 70 (b)(2), as amended by RA 9244*).

NOTE: Protest should be filed at this point and ruled with finality within 15 days after filing.

4. COMELEC verifies and authenticates the signature
5. COMELEC announces acceptance of candidates.
6. COMELEC sets election within 30 days after

the filing of the resolution or petition for recall in the case of barangay/city/municipality, and 45 days in the case of provincial officials. Officials sought to be recalled are automatic candidates (*LGC, Secs. 70 & 71*).

NOTE: The official or officials sought to be recalled shall automatically be considered as duly registered candidate or candidates to the pertinent positions and, like other candidates, shall be entitled to be voted upon (*LGC, Sec. 71*).

Effectivity of Recall (2002, 2010 Bar)

The recall of an elective local official shall be effective only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall.

Should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office (*LGC, Sec. 72*).

Q: Governor Peralta was serving his third term when he lost his governorship in a recall election.

A. Who shall succeed Governor Peralta in his office as Governor?

B. Can Governor Peralta run again as governor in the next election?

C. Can Governor Peralta refuse to run in the recall election and instead resign from his position as governor? (2010 Bar)

A: The candidate who received the highest number of votes in the recall will succeed Governor Peralta (*LGC, Sec. 72*).

Governor Peralta can run again as governor. He did not fully serve his third term, because he lost in the recall election. His third term should not be included in computing the three-term limit (*Lonzanida v. COMELEC, G.R. No. 135150, July 28, 1999*).

Governor Peralta cannot refuse to run in the recall election. He is automatically considered as duly registered candidate (*LGC, Sec. 71*).

He is not allowed to resign (*LGC, Sec. 72*).

Prohibition from resignation (2010 Bar)

The elective local official sought to be recalled shall not be allowed to resign while the recall process is in progress (*LGC, Sec. 73*).



Limitations on recall (2008 Bar)

1. Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence; and
2. No recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular election (*LGC, Sec. 74*).

NOTE: The one-year time bar will not apply where the local official sought to be recalled is a mayor and the approaching election is a *barangay* election (*Angobung v. COMELEC, G.R. No. 126576, March 5, 1997*).

Q: Sec. 74 of the LGC provides that "no recall shall take place within one year immediately preceding a regular local election." What does the term "regular local election," as used in this section, mean?

A: Referring to an election where the office held by the local elective official sought to be recalled is to be actually contested and filled by the electorate (*Paras v. COMELEC, G.R. No. 123169, Nov. 4, 1996*).

Q: Will it be proper for the COMELEC to act on a petition for recall signed by just one person?

A: **NO.** A petition for recall signed by just one person is in violation of the statutory 25% minimum requirement as to the number of signatures supporting any petition for recall (*Angobung v. COMELEC, G.R. No. 126576, March 5, 1997*).

TERM LIMITS

Term of office of an elected local official (2006 Bar)

Three (3) years starting from noon of June 30 following the election or such date as may be provided by law, except that of elective *barangay* officials, for maximum of 3 consecutive terms in the same position (*LGC, Sec. 43*).

The term of office of *Barangay* and *Sangguniang Kabataan* elective officials, by virtue of RA 9164 and RA 10742, is three (3) years.

NOTE: The objective of imposing the three-term limit rule is to "avoid the recall of a single person accumulating excess power over a particular territorial jurisdiction as a result of a prolonged stay in the *same office*".

For a three term rule to apply, the local official

must have fully served the term and been elected through regular election.

Q: From 2004 to 2007 and 2007 to 2010, Naval had been elected as a Board Member of the Sangguniang Panlalawigan for the Second District, Province of Camarines Sur. On October 12, 2009, the President approved R.A. No. 9716, which reapportioned the legislative districts in Camarines Sur. 8 out of 10 towns were taken from the old Second District to form the present Third District. The present Second District is composed of the two remaining towns, Gainza and Milaor, merged with five towns from the old First District. In the 2010 elections, Naval once again won as among the members of the Sanggunian, Third District. He served until 2013. In the 2013 elections, Naval ran anew and was re-elected as Member of the Sanggunian, Third District. Nelson Julia was likewise a Sanggunian Member candidate from the Third District in the 2013 elections. He filed before the COMELEC a Verified Petition to Deny Due Course or to Cancel COC of Naval. Julia posited that Naval had fully served for three consecutive terms as a member of the Sanggunian, irrespective of the district he had been elected from. Allowing Naval to run as a Sanggunian member for the fourth time is violative of the inflexible three-term limit rule. Is Julia correct?

A: **YES.** As worded, the constitutional provision fixes the term of a local elective office and limits an elective official's stay in office to no more than three consecutive terms. The "limitation" under this first branch of the provision is expressed in the negative—"no such official shall serve for more than three consecutive terms." This formulation—no more than three consecutive terms—is a clear command suggesting the existence of an inflexible rule. This examination of the wording of the constitutional provision and of the circumstances surrounding its formulation impresses upon us the clear intent to make term limitation a high priority constitutional objective whose terms must be strictly construed and which cannot be defeated by, nor sacrificed for, values of less than equal constitutional worth.

In Naval's case, the words of R.A. No. 9716 plainly state that the new Second District is to be created, but the Third District is to be renamed. The rationale behind reapportionment is the constitutional requirement to achieve equality of representation among the districts. The aim of legislative apportionment is to equalize population and voting power among districts. The basis for districting shall be the number of the inhabitants of a city or a province and not the number of registered voters therein. Naval's ineligibility to run, by reason of violation of the three-term limit rule, does not



undermine the right to equal representation of any of the districts in Camarines Sur. With or without him, the renamed Third District, which he labels as a new set of constituents, would still be represented, albeit by another eligible person.

In sum, there is no compelling reason to side with Naval. To declare otherwise would be to create a dangerous precedent unintended by the drafters of our Constitution and of R.A. No. 9716. Considering that the one-term gap or rest after three consecutive elections is a result of a compromise among the members of the Constitutional Commission, no cavalier exemptions or exceptions to its application is to be allowed. Further, sustaining Naval's arguments would practically allow him to hold the same office for 15 years (*Naval v. COMELEC, G.R. No. 207851, July 8, 2014*).

Term limit of *Barangay* officials

The term of office of *barangay* officials was fixed at three years under R.A. 9164 (19 March 2002). Further, Sec.43 (b) provides that "no local elective official shall serve for more than three (3) consecutive terms in the same position. The Court interpreted this section referring to all local elective officials without exclusions or exceptions (*COMELEC v. Cruz, G.R. No. 186616, Nov. 20, 2009*).

NOTE: Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected (*Sec 43(b), LGC; see previous discussion on Abundo v. COMELEC, infra.*).



NATIONAL ECONOMY AND PATRIMONY

Threefold goals of the national economy

1. More equitable distribution of opportunities, income and wealth
2. Sustained increase in the amount of goods and services produced by the nation for the benefit of the people
3. Expanding productivity (*1987 Constitution, Art. XII, Sec 1*).

Patrimony

It refers not only to natural resources but also to cultural heritage (*Manila Prince Hotel v. GSIS, G.R. No. 122156, February 3, 1997*).

REGALIAN DOCTRINE (1990, 1994, 1998, 1999, 2006 Bar)

Regalian Doctrine (*Jura Regalia*)

The Regalian Doctrine dictates that “all lands not appearing to be clearly of private dominion presumably belong to the State. Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Indeed, occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title” (*Republic v. Sps. Benigno, G.R. No. 205492, March 11, 2015*).

NOTE: All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests, or timber, wildlife, flora and fauna, and other natural resources are owned by the state. With the exception of agricultural lands, all other natural resources shall not be alienated (*1987 Constitution, Art. XII, Sec. 2*).

Effect of the Regalian Doctrine

The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable (*Republic v. Lualhati, G.R. No. 183511, March 25, 2015*).

XPNs to the Regalian Doctrine

1. When there is an *existence of native title* to land, or ownership of land by Filipinos by virtue of possession under a claim of ownership since

time immemorial and independent of any grant from the Spanish Crown. *Cariño* case firmly established a concept of private land title that existed irrespective of any royal grant from the State and was based on the strong mandate extended to the Islands via the Philippine Bill of 1902 (*Cariño v. Insular Government, G.R. No. 2869, March 25, 1907*).

2. Any land in the possession of an occupant and of his predecessors-in-interest *since time immemorial*. Such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest (*Oh Cho v. Director of Land, G.R. No. 48321, August 31, 1946*).

Limitations imposed by Sec. 2, Art II that embody the *Jura Regalia* of the State

1. Only agricultural lands of the public domain may be alienated.
2. The exploration, development, and utilization of all natural resources shall be under the full control and supervision of the State either by directly undertaking such exploration, development, and utilization or through co-production, joint venture, or production-sharing agreements with qualified persons or corporations.

NOTE: Two levels of controls that must be considered:

First level: control over the corporation which may engage with the State in “co-production, joint venture, or production sharing agreements.” If individuals, they must be Filipino citizens; if corporations, the ownership must be 60% Filipino.

Second level: control of the “co-production, joint venture, or production-sharing” operation. This must be under the full control and supervision of the State.

What the new rule says is that whenever natural resources are involved, particularly in the case of inalienable natural resources, the State must always have some control of the exploration, development, and utilization even if the individual or corporation engaged in the operation is a Filipino. This rule is not retroactive.

3. All agreements with the qualified private sector may be only for a period not exceeding 25 years, renewable for another 25 years.



XPN: Not applicable to “water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power,” for which “beneficial use may be the measure and the limit of the grant.”

4. The use and enjoyment of marine wealth of the archipelagic waters, territorial sea, and exclusive economic zone shall be reserved for Filipino citizens.

NOTE: It would seem therefore that corporations are excluded, or at least must be fully owned by Filipinos.

5. Small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons.

Native Title

Refers to the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) pre-conquest rights to lands and domains held under a claim of private ownership as far back as memory reaches. These lands are deemed never to have been public lands and are indisputably presumed to have been held that way since before the Spanish Conquest. The rights of ICCs/IPs to their ancestral *domains* (which also include ancestral *lands*) by virtue of native title shall be recognized and respected (*Indigenous Peoples' Rights Act, Sec. 11; Cruz v. Sec. of DENR, G.R. No. 135385, December 6, 2000*).

NOTE: Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated (*Indigenous Peoples' Rights Act, Sec. 11*).

Ancestral domains

All areas belonging to ICCs/IPs held under a claim of ownership, occupied or possessed by ICCs/IPs by themselves or through their ancestors, communally or individually since time immemorial, continuously until the present, except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings with government and/or private individuals or corporations [*RA 8371, Sec. 3 (a)*].

Ancestral lands

Lands held by the ICCs/IPs under the same conditions as ancestral domains except that these are limited to lands and that these lands are not merely occupied and possessed but are also utilized by the ICCs/IPs under claims of individual or traditional group ownership [*RA 8371, Sec. 3 (b)*].

RA 8371 (Indigenous Peoples' Rights Act) does not infringe upon the State's ownership over the natural resources within the ancestral domains

Sec. 3(a) of RA 8371 merely defines the coverage of ancestral domains, and describes the extent, limit and composition of ancestral domains by setting forth the standards and guidelines in determining whether a particular area is to be considered as part of and within the ancestral domains.

Sec. 5 in relation to Sec. 3(a) cannot be construed as a source of ownership rights of indigenous peoples over the natural resources simply because it recognizes ancestral domains as their “private but community property.”

Further, Sec. 7 makes no mention of any right of ownership of the indigenous peoples over the natural resources. In fact, Sec. 7(a) merely recognizes the “right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains.” Neither does Sec. 7(b), which enumerates certain rights of the indigenous peoples over the natural resources found within their ancestral domains, contain any recognition of ownership vis-à-vis the natural resources (*Separate Opinion, Kapunan, J., in Cruz v. Sec. of DENR, G.R. No. 135385, December 6, 2000*).

Coverage of the IPRA

1. Protection of the indigenous peoples' rights and welfare in relation to the natural resources found within their ancestral domains,
2. Preservation of the ecological balance
3. Ensure that the indigenous peoples will not be unduly displaced when the State-approved activities involving the natural resources located therein are undertaken (*Separate Opinion, Kapunan, J., in Cruz v. Sec. of DENR, ibid.*).

A property granted to a state university, although within the ancestral domains, cannot be distributed to indigenous peoples and cultural communities

The lands by their character have become inalienable from the moment President Garcia dedicated them for the state university's use in



scientific and technological research in the field of agriculture. They have ceased to be alienable public lands. When Congress enacted the IPRA in 1997, it provided in Sec. 56 that "property rights within the ancestral domains already existing and/or vested" upon its effectivity "shall be recognized and respected." In this case, ownership over the subject lands had been vested in the state university as early as 1958. Consequently, transferring the lands in 2003 to the indigenous peoples around the area is not in accord with the IPRA (*CMU v. Exec. Sec., G.R.No.184869, September 21, 2010*).

Stewardship Doctrine

Private property is supposed to be held by the individual only as a trustee for the people in general, who are its real owners.

NATIONALIST AND CITIZENSHIP REQUIREMENT PROVISION

Filipinized activities as provided in Art. XII of the Constitution

1. Co-production, joint venture, or production sharing agreement for exploration, development and utilization (EDU) of natural resources:

GR: Filipino citizens or entities with 60% capitalization owned by Filipino citizens.

XPN: For large-scale EDU of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations involving technical or financial agreements only (*1987 Constitution, Art. XII, Sec. 2*).

State may also directly exploit its natural resources in either of two ways:

- a. State may set up its own company to engage in the exploitation of natural resources.
- b. State may enter into a financial or technical assistance agreement ("FTAA") with private companies who act as contractors of the State (*La Bugal-B'laan v. DENR Sec., G.R. No. 127882, December 1, 2004*).
2. Use and enjoyment of nation's marine wealth within the territory: Exclusively for Filipino citizens; (*1987 Constitution, Art. XII, Sec. 2*)
3. Alienable lands of the public domain:
 - a. Only Filipino citizens may acquire not more than 12 hectares by purchase,

homestead or grant, or lease not more than 500 hectares.

- b. Private corporations may lease not more than 1000 hectares for 25 years renewable for another 25 years; (*1987 Constitution, Art. XII, Sec. 3*)
4. Certain areas of investment: reserved for Filipino citizens or entities with 60% owned by Filipinos, although Congress may provide for higher percentage; (*1987 Constitution, Art. XII, Sec. 10*)
5. In the Grant of rights, privileges and concessions covering the national economy and patrimony, State shall give preference to qualified Filipinos; and (*1987 Constitution, Art. XII, Sec. 10*)
6. Franchise, certificate or any other form of authorization for the operation of a public utility; only to Filipino citizens or entities with 60% owned by Filipinos (*1987 Constitution, Art. XII, Sec. 11*).

NOTE: Such franchise, etc., shall neither be exclusive, nor, for a period longer than 50 years, and subject to amendment, alteration or repeal by Congress. All executive and managing officers must be Filipino citizens.

Q: President Estrada signed into law RA 8762, also known as the Retail Trade Liberalization Act of 2000. It expressly repealed R.A. 1180, which absolutely prohibited foreign nationals from engaging in the retail trade business. R.A. 8762 now allows them to do under special categories. Several members of the House of Representatives, filed a petition assailing the constitutionality of RA 8762. They mainly argue that it violates the mandate of the 1987 Constitution for the State to develop a self-reliant and independent national economy effectively controlled by Filipinos. Is the Retail Trade Liberalization Act of 2000 constitutional?

A: YES. While *Sec. 19, Art. II of the 1987 Constitution* requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. **Objective:** simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development. It does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair (*Espina v. Zamora, G.R. No. 143855, September 21, 2010*).



An alien may not acquire property by virtue of a purchase made by him and his Filipino wife (1994, 1998, 2002, 2009 Bar)

The fundamental law prohibits the sale to aliens of residential land. Sec. 7, Art. XII ordains that, "*Save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.*" Thus, assuming that it was his intention that the lot in question be purchased by him and his wife, he acquired no right whatever over the property by virtue of that purchase; and in attempting to acquire a right or interest in land, vicariously and clandestinely, he knowingly violated the Constitution; the sale as to him was null and void.

He had and has no capacity or personality to question the subsequent sale of the same property by his wife on the theory that in so doing he is merely exercising the prerogative of a husband in respect of conjugal property. To sustain such a theory would permit indirect controversion of the constitutional prohibition. If the property were to be declared conjugal, this would accord to the alien husband a not insubstantial interest and right over land, as he would then have a decisive vote as to its transfer or disposition. This is a right that the Constitution does not permit him to have (*Cheeseman v. IAC*, G.R. No. 74833, January 21, 1991).

EXPLORATION, DEVELOPMENT AND UTILIZATION OF NATURAL RESOURCES

Exploration, development and utilization of natural resources (2015 Bar)

Only Filipino citizens and corporations or associations at least sixty percent (60%) of whose capital is owned by Filipino citizens are qualified to take part in exploration, development and utilization of natural resources (1987 Constitution, Art. XII, Sec. 2).

Since natural resources, except agricultural resources that cannot be alienated, they can be explored, developed, or utilized by:

1. Direct undertaking of activities by the State
2. Co-production, joint venture, or production sharing agreements with the State and all under the full control and supervision of the State (*Miners Association v. Factoran*, G.R. No. 98332, January 16, 1995).

NOTE: However, as to marine wealth, only Filipino citizens are qualified. This is also true of natural resources in rivers, bays, lakes and lagoons, but with

allowance for cooperatives (1987 Constitution, Art. XII, Sec. 2, pars. 2 and 3).

Control Test and Grandfather Rule (2015 Bar)

In *Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation*, G.R. No. 195580, January 28, 2015 (Resolution), these two tests were discussed by the Supreme Court in determining whether or not Narra Nickel Mining and Development Corporation Tesoro Mining and Development, Inc., and McArthur Mining, Inc. complied with the Filipino ownership requirement, thus, entitled to Mineral Production Sharing Agreements (MPSAs).

Control Test	Grandfather Rule
Also known as the "liberal test"; This provides that shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered of Philippine nationality.	The method by which the percentage of Filipino equity in a corporation is computed, in cases where corporate shareholders are present, by attributing the nationality of the second or even subsequent tier of ownership to determine the nationality of the corporate shareholder. Thus, to arrive at the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are determined.
Primary test (but it may be combined with the Grandfather Rule)	Applies only when the 60-40 Filipino-foreign ownership is in doubt or where there is reason to believe that there is non-compliance with the provisions of the Constitution on the nationality restriction.

NOTE: "Doubt" - does not refer to the fact that the apparent Filipino ownership of the corporation's equity falls below the 60% threshold. Rather, it



refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders.

Circumstances that compelled the application of the Grandfather Rule in *Narra Nickel Mining v. Redmont Consolidated Mines*

1. The three mining corporations had the same 100% Canadian owned foreign investor;
2. The similar corporate structure and shareholder composition of the three corporations;
3. A major Filipino shareholder within the corporate layering did not pay any amount with respect to its subscription; and
4. The dubious act of the foreign investor in conveying its interests in the mining corporations to another domestic corporation.

NOTE: Corporate layering is valid insofar as it does not intend to circumvent the Filipino ownership requirement of the Constitution (*Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corpation, G.R. No. 195580, April 21, 2014*).

Validity of service contract entered into by the State with a foreign-owned corporation

Subject to the strict limitations in the last two paragraphs of Sec. 2 Art. XII, financial and technical agreements are a form of service contract. Such service contracts may be entered into *only* with respect to minerals, petroleum, and other mineral oils. The grant of such service contracts is subject to several safeguards, among them:

1. That the service contract be crafted in **accordance with a general law** setting standard of uniform terms, conditions and requirements;

Ratio: To attain certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.

2. **President be the signatory** for the government; and

Ratio: Before an agreement is presented to the President for signature, it will have been vetted several times over at different levels to ensure that it conforms to law and can withstand public scrutiny.

3. President **reports** the executed agreement **to Congress** within 30 days.

Ratio: To give that branch of government an opportunity to

look over the agreement and interpose timely objections, if any (*La Bugal B'laan v. DENR, G.R. No. 127882, December 1, 2004*).

FRANCHISES, AUTHORITY, AND CERTIFICATES FOR PUBLIC UTILITIES

Public Utility

A business or service engaged in regularly supplying the public with some commodity or service of public consequence, such as electricity, gas, water, transportation, telephone or telegraph service. To constitute a public utility, the facility must be necessary for the maintenance of life and occupation of the residents. As the name indicates, "public utility" implies public use and service to the public (*J.G. Summit v. CA G.R. No. 124293, Sept. 24, 2003*).

Public utilities are privately owned and operated businesses whose services are essential to the general public. They are enterprises which specially cater to the needs of the public and conduce to their comfort and convenience. As such, public utility services are impressed with public interest and concern (*Kilusang Mayo Uno Labor Center v. Garcia, Jr., G.R. No. 115381, Dec. 23, 1994*).

Operation of a public utility

Only Filipino citizens or corporations at least 60% of whose capital is Filipino owned are qualified to acquire a franchise, certificate or any other form of authorization (*1987 Constitution, Art. XII, Sec. 11*).

Franchise requirement before one can operate a public utility (1994 Bar)

The Constitution, in no uncertain terms, requires a franchise for the operation of a public utility. However, it does not require a franchise before one can own the facilities needed to operate a public utility so long as it does not operate them to serve the public.

Sec. 11, Art. XII provides that, "No franchise, certificate or any other form of authorization for the *operation of a public utility* shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least 60% of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive character or for a longer period than 50 years..." (*Tatad v. Garcia, G.R. No. 114222, April 6, 1995*).

NOTE: A shipyard is not a public utility. Its nature dictates that it serves but a limited clientele whom it may choose to serve at its discretion. It has no legal



obligation to render the services sought by each and every client (*J.G. Summit v. CA, G.R. No. 124293, September 24, 2003*).

Exclusivity of a public utility franchise

A franchise to operate a public utility is not an exclusive private property of the franchisee. Under the Constitution, no franchisee can demand or acquire exclusivity in the operation of a public utility. Thus, a franchisee cannot complain of seizure or taking of property because of the issuance of another franchise to a competitor (*Pilipino Telephone Corp. v. NRC, G.R. No. 138295, August 28, 2003*).

NOTE: SC said that Congress does not have the exclusive power to issue such authorization. Administrative bodies, e.g. LTFRB, ERB, etc., may be empowered to do so. Franchises issued by Congress are not required before each and every public utility may operate (*Albano v. Reyes, G.R. No. 83551, July 11, 1989*). The law has granted certain administrative agencies the power to grant licenses for or to authorize the operation of certain public utilities (*See EO nos. 172 and 202*).

Delegation of authority to grant franchises or similar authorizations by the Congress

Under the Constitution, Congress has an explicit authority to grant a public utility franchise. However, it may validly delegate its legislative authority, under the power of subordinate legislation, to issue franchises of certain public utilities to some administrative agencies (*Francisco v. Toll Regulatory Board, G.R. No. 183599, October 19, 2010*).

It is generally recognized that a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, the power to grant franchises has frequently been delegated, even to agencies other than those of a legislative nature. In pursuance of this, it has been held that privileges conferred by grant by local authorities as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature. It is thus clear that Congress does not have the sole authority to grant franchises for the operation of public utilities (*Hontiveros-Baraquel v. Toll Regulatory Board, G.R. No. 181293, February 23, 2015*).

The government can modify a radio or television franchise to grant free airtime to COMELEC.

All broadcasting, whether by radio or television stations, is licensed by the Government. Radio and television companies do not own the airwaves and frequencies; they are merely given temporary

privilege of using them. A franchise is a privilege subject to amendment, and the provision of BP 881 granting free airtime to the COMELEC is an amendment of the franchise of radio and television stations (*TELEBAP v. COMELEC, G.R. No. 132922, April 21, 1998*).

Foreigners who own substantial stockholdings in a corporation, engaged in the advertising industry, cannot sit as a treasurer of said corporation

A treasurer is an executive or a managing officer. Sec. 11(2), Art. XVI provides that the participation of the foreign investors in the governing bodies of entities shall be limited to their proportionate share in the capital thereof, and all the officers of such entities must be citizens of the Philippines (*Bar examination in Political Law, 1989*).

Ownership requirement

1. **Advertising-** 70% of their capital must be owned by Filipino citizens [*Art. XVI, Sec. 1(2)*]
2. **Mass Media-** must be wholly owned by Filipino citizens [*Art. XVI, Sec. 11(1)*]
3. **Educational institutions-** 60% of their capital must be owned by Filipino citizens [*Art. XVI, Sec. 4(2)*]

Interpretation of the term "capital" as used in Sec. 11, Art. XII in determining compliance with the ownership requirement

Refers only to shares of stock entitled to vote in the election of directors, and only to common shares and not to the total outstanding capital stock comprising both common and non-voting preferred shares.

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Sec. 11, Art. XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Sec. 11, Art. XII of the Constitution refers only to shares of stock that can vote in the election of directors (*Gamboa v. Sec. of Finance, G.R. No. 176579, June 28, 2011*).

NOTE: The Constitution expressly declares as State policy the development of an economy "effectively controlled" by Filipinos. Consistent with such State policy, the Constitution explicitly reserves the ownership and operation of public utilities to



Philippine nationals, who are defined in the Foreign Investments Act of 1991 as Filipino citizens, or corporations or associations at least 60% of whose capital with voting rights belongs to Filipinos (*Gamboa v. Sec. of Finance, ibid.*).

Temporary Take-over of the state of a business affected with public interest

The State may take over or direct the operation of any privately owned public utility or business affected with public interest (*1987 Constitution, Art. XII, Sec. 17*).

Requisites for the State to temporarily take over a business affected with public interest (2006 Bar)

1. There is national emergency;
2. The public interest so requires; and
3. Under reasonable terms prescribed by it (*1987 Constitution, Art. XII, Sec. 17*)

ACQUISITION, OWNERSHIP AND TRANSFER OF PUBLIC PRIVATE LANDS

Imperium vs. Dominion

Imperium	Dominium
Government authority possessed by the State which is appropriately embraced in sovereignty.	The capacity of the State to own and acquire property. It refers to lands held by the government in proprietary character.

Classification of lands of public domain (1990, 1992, 1997, 1998, 2001, 2003, 2004 Bar)

1. Agricultural
2. Forest or timber
3. Mineral lands
4. National parks (*1987 Constitution, Art. XII, Sec. 3*)

Private lands

Any land of private ownership. This includes both lands owned by private individuals and lands which are patrimonial property of the State or municipal corporations (*Bernas, 1995*).

Conversion:

1. **Public domain to private land**-when it is acquired from the government either by purchase or by grant (*Oh Cho v. Director of Lands, G.R. No. 48321, August 31, 1946*).

Requirement: There must be a positive act from the government; mere issuance of title is not enough (*Sunbeam v. CA, G.R. No. 50464, January 29, 1990*).

2. **Public land to private land thru prescription**- Such open, continuous, exclusive and notorious occupation of the disputed properties for more than 30 years must be conclusively established. **Purpose of quantum of proof:** to avoid erroneous validation of actually fictitious claims or possession over the property in dispute. **Effect:** creates the legal fiction whereby the land, upon completion of the requisite period *ipso-jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property (*San Miguel Corp. v. CA, GR No. 57667, May 28, 1990*).
3. **Alienable public land to private land**- Alienable public land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for 30 years (under The Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, *ipso jure*. The land *ipso jure* ceases to be of the public domain and becomes private property (*Director of Lands v. IAC, G.R. No. 73002, December 29, 1986*).

What is required by law is open, continuous, exclusive, and notorious possession and occupation under a *bona fide* claim of ownership:

1. For 10 years, if the possession is in good faith
2. For 30 years if it is in bad faith (*Republic v. Enciso, G.R. No. 160145, Nov. 11, 2005*)

Disposition of private lands

GR: No private land shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of the public land (*1987 Constitution, Art. XII, Sec. 7*).

XPNS:

1. Foreigners who inherit through intestate succession;
2. Former natural-born citizen may be a transferee of private lands subject to limitations provided by law (*1987 Constitution, Art. XII, Sec 8*).
3. Ownership in condominium units; and
4. Parity right agreement, under the 1935 Constitution.

A natural born citizen of the Philippines who has lost his Philippine citizenship may be a



transferee of private lands (1995, 1998, 2000, 2009 Bar)

Subject to the limitations imposed by law. Thus, even if private respondents were already Canadians when they applied for registration of the properties in question, there could be no legal impediment for the registration thereof, considering that it is undisputed that they were formerly natural-born citizens (*Republic v. CA, G.R. No. 108998, Aug. 24, 1984*).

A religious corporation is qualified to have lands in the Philippines on which it may build its church and make other improvements

The Constitution makes no exception in favor of religious associations. The mere fact that a corporation is religious does not entitle it to own public land. Land tenure is not indispensable to the free exercise and enjoyment of religious profession of worship. The religious corporation can own private land only if it is at least 60% owned by Filipino citizens (*Register of Deeds v. Ung Siu Si Temple, G.R. No. L-6776, May 21, 1955*).

Qualification of corporation sole to purchase or own lands in the Philippines

Sec. 113, BP Blg. 68 states that any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent or educational purposes, and may receive bequests or gifts for such purposes. There is no doubt that a corporation sole by the nature of its Incorporation is vested with the right to purchase and hold real estate and personal property. It need not therefore be treated as an ordinary private corporation because whether or not it be so treated as such, the Constitutional provision involved will, nevertheless, be not applicable (*Rep. v. IAC, G.R. No. 75042, November 29, 1988*).

Lease of private lands by religious corporations

Under *Sec. 1 of PD 471*, corporations and associations owned by aliens are allowed to lease private lands up to 25 years, renewable for a period of 25 years upon the agreement of the lessor and the lessee. Hence, even if the religious corporation is owned by aliens, it may still lease private lands.

PRACTICE OF PROFESSION

State policy on professionals and skilled workers

The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and

craftsmen in all fields shall be promoted by the State [*1987 Constitution, Art. XII, Sec. 14(1)*].

Practice of profession in the Philippines

GR: The practice of all professions in the Philippines shall be limited to Filipino citizens.

XPN: In cases provided by law [*1987 Constitution, Art. XII, Sec. 14(2)*]

Regulation of profession or occupation

The power to regulate the exercise of a profession or pursuit of an occupation cannot be exercised by the State or its agents in an arbitrary, despotic or oppressive manner (*Board of Med. v. Yasuyuki Ota, GR No. 166097, July 14, 2008*).

NOTE: Since Filipino citizenship is a requirement for admission to the bar, loss thereof terminates membership in the Philippine bar and, consequently, the privilege to engage in the practice of law. The practice of law is a privilege denied to foreigners.

XPN: when Filipino citizenship is lost by reason of naturalization as a citizen of another country but subsequently reacquired pursuant to RA 9225.

Reason: all Philippine citizens who become citizens of another country shall be *deemed not to have lost their Philippine citizenship* under the conditions of RA 9225.

Thus, a Filipino lawyer who becomes a citizen of another country is deemed never to have lost his Filipino citizenship if he reacquires it in accordance with RA 9225. Although he is also deemed never to have terminated his membership in the Philippine bar, no automatic right to resume law practice accrues (*Petition for leave to resume practice of law, Dacanay, B.M. No. 1678, December 17, 2007*).

Q: Ching, a legitimate child born under the 1935 Constitution of a Filipino mother and an alien father, was one of the successful Bar examinees. The oath taking of the successful Bar examinees was scheduled on 5 May 1999. However, because of the questionable status of Ching's citizenship, he was not allowed to take his oath. OSG clarifies that 2 conditions must concur in order that the election of Philippine citizenship may be effective, namely: (a) the mother of the person making the election must be a citizen of the Philippines; and (b) said election must be made upon reaching the age of majority. Ching validly elect Philippine citizenship fourteen (14) years after he has reached the age of majority. Can Ching be admitted to the Philippine bar?



A: NO. Ching, despite the special circumstances, failed to elect Philippine citizenship within a reasonable time. The reasonable time means that the election should be made within 3 years from "upon reaching the age of majority", which is 21 years old. Instead, he elected Philippine citizenship 14 years after reaching the age of majority which the court considered not within the reasonable time. Philippine citizenship can never be treated like a commodity that can be claimed when needed and suppressed when convenient. The Court resolves to deny Ching's application for admission to the Philippine Bar (*Re: Application for admission to the Philippine Bar v. Ching*, B.M. No. 914, October 1, 1999).

Q: After the PRC released the names of successful examinees in the Medical Licensure Examination, the Board of Medicine observed that the grades of the 79 successful examinees of Fatima College of Medicine were unusually and exceptionally high in the two (2) most difficult subjects of the exam, i.e., Biochemistry and Obstetrics and Gynecology. The NBI Investigation found that the Fatima examinees gained early access to the test questions. The issuance of license to practice was not automatically granted to the successful examinees. Respondents counter that having passed the 1993 licensure examinations for physicians, the PRC has the obligation to administer to them the oath of physicians and to issue their certificates of registration as physicians. Are the respondents correct?

A: NO. It is long established rule that a license to practice medicine is a privilege or franchise granted by the government. It must be stressed, nevertheless, that the power to regulate the exercise of a profession or pursuit of an occupation cannot be exercised by the State or its agents in an arbitrary, despotic, or oppressive manner. A political body that regulates the exercise of a particular privilege has the authority to both forbid and grant such privilege in accordance with certain conditions. Such conditions may not, however, require giving up one's constitutional rights as a condition to acquiring the license. Verily, to be granted the privilege to practice medicine, the applicant must show that he possesses all the qualifications and none of the disqualifications (*PRC v. De Guzman*, G.R. No. 144681, June 21, 2004).

ORGANIZATION AND REGULATION OF CORPORATIONS, PRIVATE AND PUBLIC

Organization and Regulation of Corporations

Its purpose is to prevent the pressure of special interests upon the lawmaking body in the creation of corporations or in the regulation of the same. To permit the lawmaking body by special law to provide for the organization, formation or regulation of private corporations would be in effect to offer to it the temptation in many cases to favor certain groups to the prejudice of others or to the prejudice of the interests of the country (*Philippine Society for the Prevention of Cruelty to Animals v. COA*, G.R. No. 169752, September 25, 2007).

Creation of GOCC by Congress

GOCC may be created or established by special charters in the interest of the common good and subject to the test of economic viability (1987 Constitution, Art. XII, Sec 16).

NOTE: Congress, however, may not create a corporation whose purpose is to compete with a private corporation.

In the interest of the public good and subject to the test of economic viability' meaning

GOCC must show capacity to function efficiently in business and that they should not go into activities which the private sector can do better. Moreover, economic viability is more than financial viability but also included capability to make profit and generate benefits not quantifiable in financial terms.

NOTE: See discussion of GOCC under Public Corporations.

MONOPOLIES, RESTRAINT OF TRADE AND UNFAIR COMPETITION

Monopoly

A privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of a particular commodity (*Agan, Jr. v. PIATCO*, G.R. No. 155001, May 5, 2003).

State policy regarding monopolies

The State shall regulate or prohibit monopolies when the public interest so requires. No combination in restraint of trade or unfair competition shall be allowed (1987 Constitution, Art. XII, Sec. 16).

Test on whether there is unlawful machination or combination in restraint of trade

Whether under the particular circumstances of the case and the nature of the particular contract



involved, such contract is, or is not, against public policy (*Avon v. Luna*, G.R. No. 153674, Dec. 20, 2006).

NOTE: The phrase “unfair foreign competition and trade practices” is not to be understood in a limited legal and technical sense, but in the sense of anything that is harmful to Philippine enterprises. At the same time, however, the intention is not to protect local inefficiency. Nor is the intention to protect local industries from foreign competition at the expense of the consuming public.

Essence of the provision

Sec. 19 is anti-trust in history and spirit. Only competition which is fair can release the creative forces of the market. Competition is thus the underlying principle of Section 19, Article XII.

The objective of anti-trust law is ‘to assure a competitive economy based upon the belief that through competition, producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Additionally, there is reliance upon “the operation of the ‘market’ system (free enterprise) to decide what shall be produced, how resources shall be allocated in the production process, and to whom various products will be distributed. The market system relies on the consumer to decide what and how much shall be produced, and on competition, among producers who will manufacture it (*Energy Regulatory Board v. CA* G.R. No. 113079, April 20, 2001).

Regulation of monopolies

Monopolies are not *per se* prohibited by the Constitution. It may be permitted to exist to aid the government in carrying on an enterprise or to aid in the interest of the public. However, because monopolies are subject to abuses that can inflict severe prejudice to the public, they are subjected to a higher level of State regulation than an ordinary business undertaking (*Agan, Jr. v. PIATCO*, G.R. No. 155001, May 5, 2003).

Allowance of contracts requiring exclusivity

Contracts requiring exclusivity are not *per se* void. Each contract must be viewed *vis-à-vis* all the circumstances surrounding such agreement in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition (*Avon v. Luna*, G.R. No. 153674, December 20, 2006).

Free enterprise clause vs. Police Power of the State

Although the Constitution enshrines free enterprise as a policy, it nevertheless reserves to the

Government the power to intervene whenever necessary for the promotion of the general welfare, as reflected in Secs. 6 and 19 of Art. XII (*Assoc. of Phil. Coconut Desiccators v. Phil. Coconut Authority*, G.R. No. 110526, February 10, 1998).



SOCIAL JUSTICE AND HUMAN RIGHTS

Goals of social justice under the Constitution

1. Equitable diffusion of wealth and political power for common good;
2. Regulation of acquisition, ownership, use and disposition of property and its increments; and
3. Creation of economic opportunities based on freedom of initiative and self-reliance (1987 Constitution, Art. XIII, Sec. 1 and 2).

CONCEPT OF SOCIAL JUSTICE

Social justice

It is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic force by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex* (Calalang v. Williams, G.R. No. 47800, December 2, 1940).

Social justice does not champion division of property or equality of economic status; what it and the Constitution do guaranty are equality of opportunity, equality of political rights, equality before the law, equality between values given and received on the basis of efforts exerted in their production. (Guido v. Rural Progress Administration, G.R. No. L-2089, October 31, 1949)

Two principal activities, which the State is commanded to attend to in order to achieve the goals of social justice

1. The creation of more economic opportunities and more wealth; and
2. Closer regulation of the acquisition, ownership, use, and disposition of property in order to achieve a more equitable distribution of wealth and power.

Aspects of human life covered by Art. XIII

1. Social justice and human rights
2. Labor
3. Agrarian and natural resources reform
4. Urban land reform and housing

5. Health
6. Women
7. Role and rights of people's organization
8. Human rights

Factors which must be weighed in regulating the relations between workers and employers

1. The right of labor to its just share in the fruits of production
2. The right of enterprises to reasonable returns of investments, and to expansion and growth [1987 Constitution, Art XIII, Sec. 3, par. (4)].

NOTE: It must be remembered, however, that the command to promote social justice itself might make it necessary to tilt the balance in favor of underprivileged workers.

Provisions of the Constitution on women

1. The State shall equally protect the life of the mother and the life of the unborn from conception (1987 Constitution, Art. II, Sec. 12).
2. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men (1987 Constitution, Art. II, Sec. 14).
3. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such faculties and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation (1987 Constitution, Art. XIII, Sec. 14). (1994, 2000 Bar)

Consultation requirement before urban and rural dwellers can be relocated

The urban and rural dwellers and the communities where they are to be relocated must be consulted. Otherwise, there shall be no resettlement [1987 Constitution, Art. XIII, Sec. 10 (20)].

People's organizations

Bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure [1987 Constitution, Art. XIII, Sec. 15 (2)].

Agrarian Reform

Refers to the redistribution of lands, regardless of crops or fruits produced, to farmers and regular farmworkers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other

arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stocks, which will allow beneficiaries to receive a just share of the fruits of the lands they work [R.A. 6657, *Comprehensive Agrarian Reform Law of 1988*, Sec. 3(a)].

Right of Retention under Agrarian Reform

The right of retention is a constitutionally guaranteed right, which is subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner (*Delfino v. Anasao*, G.R. No. 197486, September 10, 2014).

COMMISSION ON HUMAN RIGHTS (CHR) (1991, 1992, 1997, 2001, 2005, 2007 Bar)

Constitutional mandate

Art. XIII of the 1987 Constitution mandates the Congress to give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good.

Purpose of CHR

As an independent national human rights institution, the Commission on Human Rights is committed to ensure the primacy of all human rights to their protection, promotion and fulfillment, on the basis of equality and non-discrimination, in particular for those who are marginalized and vulnerable (CHR Mission).

Nature of the CHR

From the 1987 Constitution and the Administrative Code, it is abundantly clear that the CHR is not among the class of Constitutional Commissions (*CHR Employees' Assoc. v. CHR*, G.R. No. 155336, November 25, 2004).

Absence of fiscal autonomy

The CHR, although admittedly a constitutional creation is, nonetheless, not included in the genus of offices accorded fiscal autonomy by either constitutional or legislative fiat (*Ibid.*).

Power to investigate

The CHR has the power to investigate all forms of human rights violations involving civil and political

rights and monitor the compliance by the government with international treaty obligations on human rights (1987 Constitution, Art. XIII, Sec. 18).

NOTE: In essence, the Commission's power is only investigative. It has no prosecutorial power. For prosecution, it must rely on the executive department.

The Constitution clearly and categorically grants to the Commission the power to *investigate all forms of human rights violations involving civil and political rights*. To investigate is not to adjudicate or adjudge. The legal meaning of "investigate" is essentially to follow up step by step by patient inquiry or observation, to trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry. In the legal sense, "adjudicate" means to settle in the exercise of judicial authority, to determine finally and "adjudge" means to pass on judicially, to decide, settle or decree, or to sentence or condemn (*Cariño v. CHR*, G.R. No. 96681, Dec. 2, 1991).

Q: Informal settlers and vendors have put up structures in an area intended for a People's Park, which are impeding the flow of traffic in the adjoining highway. Mayor Cruz gave notice for the structures to be removed, and the area vacated within a month, or else, face demolition and ejectment. The occupants filed a case with the Commission on Human Rights (CHR) to stop the Mayor's move. The CHR then issued an order to desist against Mayor Cruz with warning that he would be held in contempt should he fail to comply with the desistance order. When the allotted time lapsed, Mayor Cruz caused the demolition and removal of the structures. Accordingly, the CHR cited him for contempt. Is the CHR empowered to declare Mayor Cruz in contempt? Does it have contempt powers at all?

A: NO. CHR does not possess adjudicative functions and therefore, on its own, is not empowered to declare mayor in contempt for issuing the "order to desist". However, under the 1987 Constitution, the CHR is constitutionally authorized, in the exercise of its investigative functions, to "adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court." Accordingly, the CHR, in the course of an investigation, may only cite or hold any person in contempt and impose the appropriate penalties in accordance with the procedure and sanctions provided for in the Rules of Court (*Cariño v. CHR, ibid.*).

Absence of compulsory powers



It may not issue writs of injunction or restraining orders against supposed violators of human rights to compel them to cease and desist from continuing their acts complained of (*Export Processing Zone Authority v. CHR, GR No. 101476, April 14, 1992*).

Regarding its contempt powers, the CHR is constitutionally authorized to "adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court." That power to cite for contempt, however, should be understood to apply only to violations of its adopted operational guidelines and rules of procedure essential to carry out its investigational powers (*Simon, Jr. v. CHR, G.R. No. 100150, January 5, 1994*).

Q: The mother of the late Jennifer Laude filed an Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail and a Motion to Allow Media Coverage. However, for failure to comply with the 3-day notice rule and due to the absence of the concurrence of the Public Prosecutor thereto, the trial judge denied said motions. Mrs. Laude now imputes grave abuse of discretion on the part of the trial judge. She argues that her procedural blunders should be excused on the ground that under the International Covenant on Civil and Political Rights and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, they have the right to access to justice. Is Mrs. Laude's contentions correct?

A: NO. Failure to meet the 3-day notice rule for filing motions and to obtain the concurrence of the Public Prosecutor to move for an interlocutory relief in a criminal prosecution cannot be excused by general exhortations of human rights (*Laude v. Hon. Ginez-Jabalde, G.R. No. 217456, November 24, 2015*).

Q: In order to implement a big government flood control project, the Department of Public Works and Highways (DPWH) and a local government unit (LGU) removed squatters from the bank of a river and certain esteros for relocation to another place. Their shanties were demolished. The Commission on Human Rights (CHR) conducted an investigation and issued an order for the DPWH and the LGU to cease and desist from effecting the removal of the squatters on the ground that the human rights of the squatters were being violated. The DPWH and the LGU objected to the order of the CHR. Resolve which position is correct. Reasons. (2001 Bar)

A: The position of the Department of Public Works and Highways and of the local government unit is

correct. As held in *Export Processing Zone Authority v. Commission on Human Rights*, 208 SCRA 125 (1992), no provision in the Constitution or any law confers on the Commission on Human Rights jurisdiction to issue temporary restraining orders or writs of preliminary injunction. The Commission on Human Rights has no judicial power. Its powers are merely investigatory.

EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE, AND SPORTS

(1992, 1993, 1994, 1999, 2003, 2007, 2009, 2010 Bar)

Educational institution

Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education, which "refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels" (*Commissioner of Internal Revenue v. CA, G.R. No. 124043, October 14, 1998*).

NOTE: It is settled that the term "educational institution," when used in laws granting tax exemptions, refers to a "school seminary, college or educational establishment" (*Commissioner of Internal Revenue v. CA, ibid*).

Principal characteristics of education which the State must promote and protect

1. Quality education;
2. Affordable education (*1987 Constitution, Art. XIV, Sec. 1*)
3. Education that is relevant to the needs of the people [*1987 Constitution, Art. XIV, Sec. 2 (1)*]

Parens Patriae

The State has the authority and duty to step in where parents fail to or are unable to cope with their duties to their children.

Basis for the requirement that a school or educational institution must first obtain government authorization before operating

Such requirement is based on the State policy that educational programs and/or operations shall be of good quality and, therefore, shall at least satisfy minimum standards with respect to curricula, teaching staff, physical plant and facilities and administrative and management viability (*Philippine Merchant Marine School Inc. v. CA, G.R. No. 112844, June 2, 1995*).



State can regulate the right of a citizen to select a profession or course of study (1994, 2000, 2008 Bar)

While it is true that the Court has upheld the constitutional right of every citizen to select a profession or course of study subject to fair, reasonable and equitable admission and academic requirements, the exercise of this right may be regulated pursuant to the **police power** of the State to safeguard health, morals, peace, education, order, safety and general welfare. Thus, persons who desire to engage in the learned professions requiring scientific or technical knowledge may be required to take an examination as a prerequisite to engaging in their chosen careers. This regulation assumes particular pertinence in the field of medicine, in order to protect the public from the potentially deadly effects of incompetence and ignorance (*Professional Regulation Commission v. De Guzman*, GR No. 144681, June 21, 2004).

Aspects of education that are *Filipinized*

1. Ownership:
 - a. Filipino Citizens; or
 - b. Corporations or associations where at least 60% of the capital is owned by Filipino citizens

XPN: Those established by religious groups and mission boards;
2. Control and administration; and
3. Student population [*1987 Constitution, Art. XIV, Sec. 4 (2)*]

NOTE: The Congress may increase Filipino equity participation in all educational institutions.

Official medium of communication and instruction (2007 Bar)

The official languages are Filipino and, until otherwise provided by law, English. The regional languages are the auxiliary official languages in the regions and shall serve as auxiliary media of instruction therein. Spanish and Arabic shall be promoted on a voluntary and optional basis (*1987 Constitution, Art. XIV, Sec. 7*).

ACADEMIC FREEDOM (2007, 2013 Bar)

Aspects of Academic Freedom

1. *From the standpoint of the educational institution*- To provide that atmosphere which is most conducive to speculation, experimentation and creation;
2. *From the standpoint of the faculty* –

- a. Freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties
 - b. Freedom in the classroom in discussing his subject less controversial matters which bear no relation to the subject
 - c. Freedom from institutional censorship or discipline, limited by his special position in the community
3. *From the standpoint of the student* – Right to enjoy in school the guarantee of the Bill of Rights (*Non v. Dames*, G.R. No. 89317, May 20, 1990)

Freedoms afforded to educational institutions relating to its right to determine for itself on academic grounds

1. Who may teach
2. What may be taught
3. How shall it be taught
4. Who may be admitted to study (*Miriam College Foundation v. CA*, G.R. No. 127930, December 15, 2000)

Limitations on academic freedom

1. Police power of the State
2. Social Interest of the community

NOTE: Academic freedom of institutions of higher learning is a freedom granted to “institutions of higher learning” which is thus given a “wide sphere of authority certainly extending to the choice of students.” If such institution of higher learning can decide who can and who cannot study in it, it certainly can also determine on whom it can confer the honor and distinction of being its graduates. Thus, a university can validly revoke a degree or honor it has conferred to a student after graduation after finding that such degree or honor was obtained through fraud (*Garcia v. Faculty Admission Committee, Loyola School of Theology*, G.R. No. L-40779, November 28, 1975).

This freedom of a university does not terminate upon the “graduation” of a student, for it is precisely the “graduation” of such a student that is in question. An institution of higher learning cannot be powerless if it discovers that an academic degree it has conferred is not rightfully deserved. The pursuit of academic excellence is the university’s concern. It should be empowered, as an act of self-defense, to take measures to protect itself from serious threats to its integrity (*UP Board of Regents v. CA*, G.R. No. 134625, Aug. 31, 1999).

Q: Juan delos Santos, et al., students of De La Salle University (DLSU) and College of Saint Benilde are members of the “Domingo Lux



Fraternity". They lodged a complaint with the Discipline Board of DLSU charging Alvin Aguilar, *et al.* of Tau Gamma Phi Fraternity with "direct assault" because of their involvement in an offensive action causing injuries to the complainants, which were the result of a fraternity war. The DLSU-CSB Joint Discipline Board found Aguilar *et al.* guilty and were meted the penalty of automatic expulsion. Was DLSU within its rights in expelling the students?

A: NO. It is true that schools have the power to instill discipline in their students as subsumed in their academic freedom. This power does not give them the untrammelled discretion to impose a penalty which is not commensurate with the gravity of the misdeed. If the concept of proportionality between the offense committed and the sanction imposed is not followed, an element of arbitrariness intrudes. Thus, the penalty of expulsion imposed by DLSU on Aguilar, *et al.* is disproportionate to their deeds (*DLSU v. CA, G.R. No. 127980, December 19, 2007*).

Q: The counsel of the losing party in the case of *Vinuya, et al. v. Exec. Sec* filed a Supplemental Motion for Reconsideration, in the said Decision, they posited their charge of plagiarism as one of the grounds for reconsideration of the decision. A statement by the faculty of UP Law on the allegations of plagiarism and misrepresentation in the SC entitled "Restoring Integrity" was submitted by the UP professors. They expressed dissatisfaction over Justice Del Castillo's explanation on how he cited the primary sources of the quoted portions and yet arrived at a contrary conclusion to those of the authors of the articles supposedly plagiarized. Beyond this, however, the statement bore certain remarks which raise concern for the Court. It reads: "An extraordinary act of injustice has again been committed against the brave Filipinas who had suffered abuse during a time of war."

Thus, the Court, in a Show Cause Resolution, directed Dean Leonen, and several other lawyers from UP Law to show cause, why they should not be disciplined as members of the Bar for violation of Canons 1, 11 and 13 and Rules 1.02 and 11.05 of the Code of Professional Responsibility.

1. Does the Show Cause Resolution deny respondents their freedom of expression?
2. Does the Show Cause Resolution violate respondents' academic freedom as law professors?

A:

1. **NO.** A reading of the Show Cause Resolution will plainly show that it was neither the fact that respondents had criticized a decision of the Court nor that they had charged one of its members of plagiarism that motivated the said Resolution. It was the manner of the criticism and the contumacious language by which respondents, who are neither parties nor counsels in the *Vinuya* case, have expressed their opinion in favor of the petitioners in the said pending case for the "proper disposition" and consideration of the Court that gave rise to said Resolution. The Show Cause Resolution painstakingly enumerated the statements that the Court considered excessive and uncalled for under the circumstances surrounding the issuance, publication, and later submission to this Court of the UP Law faculty's Restoring Integrity Statement.

2. **No.** It is not contested that respondents (UP Law professors) are, by law and jurisprudence, guaranteed academic freedom and indisputably, they are free to determine what they will teach their students and how they will teach. As pointed out, there is nothing in the Show Cause Resolution that dictates upon respondents the subject matter they can teach and the manner of their instruction. Moreover, it is not inconsistent with the principle of academic freedom for this Court to subject lawyers who teach law to disciplinary action for contumacious conduct and speech, coupled with undue intervention in favor of a party in a pending case, without observing proper procedure, even if purportedly done in their capacity as teachers (*RE: Letter of the UP Law Faculty, A.M. No. 10-10-4-SC, March 8, 2011*).

Regulatory power of the Education Secretary as to teaching and non-teaching personnel of private schools

The qualifications of teaching and non-teaching personnel of private schools, as well as the causes for the termination of their employment, are an integral aspect of the educational system of private schools. It is thus **within the authority** of the Secretary of Education to issue a rule, which provides for the dismissal of teaching and non-teaching personnel of private schools based on their incompetence, inefficiency, or some other disqualification (*Leus v. St. Scholastica's College Westgrove, G.R. No. 187226, January 28, 2015*).

Philippine Military Academy's(PMA) authority to impose disciplinary measures

PMA may impose disciplinary measures and punishment, as it deems fit and consistent with the peculiar needs of the Academy. Even without



express provision of a law, the PMA has regulatory authority to administratively dismiss erring cadets. As an academic institution, the PMA has the inherent right to promulgate reasonable norms, rules and regulations that it may deem necessary for the maintenance of school discipline, which is specifically mandated by Sec. 3 (2), Article XIV of the 1987 Constitution. The PMA has the freedom on who to admit (and, conversely, to expel) given the high degree of discipline and honor expected from its students who are to form part of the AFP. The schools' power to instill discipline in their students is subsumed in their academic freedom and that "the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival. The dismissal of Cudia from the PMA due to being 2 minutes late for a class was affirmed (*Cudia v. PMA*, G.R. No. 211362, February 24, 2015).

It must be borne in mind that schools are established, not merely to develop the intellect and skills of the studentry, but to inculcate lofty values, ideals and attitudes of the total man. Under the rubric of "right to education," students have a concomitant duty to learn under the rules laid down by the school. Hence, as the primary training and educational institution of the AFP, the PMA certainly has the right to invoke academic freedom in the enforcement of its internal rules and regulations, which are the Honor Code and the Honor System. The Honor Code is a set of basic and fundamental ethical and moral principle. It is the minimum standard for cadet behavior and serves as the guiding spirit behind each cadet's action. Throughout a cadet's stay in the PMA, he or she is absolutely bound thereto (*Cudia v. PMA*, *ibid.*).

SCIENCE AND TECHNOLOGY (1992, 1994 Bar)

Principal characteristics of science and technology which the State must promote and protect

1. Priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services;
2. Support indigenous, appropriate, and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life (1987 Constitution, Art. XIV, Sec. 10).
3. Regulate the transfer and promote the adaptation of technology from all sources for the national benefit (1987 Constitution, Art. XIV, Sec. 12).

4. Encourage the widest participation of private groups, local governments, and community-based organizations in the generation and utilization of science and technology (1987 Constitution, Art. XIV, Sec. 12).
5. Protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law (1987 Constitution, Art. XIV, Sec. 13).

NOTE: The Congress may provide for incentives, including tax deductions, to encourage private participation in programs of basic and applied scientific research. Scholarships, grants-in-aid, or other forms of incentives shall be provided to deserving science students, researchers, scientists, inventors, technologists, and specially gifted citizens (1987 Constitution, Art. XIV, Sec. 11).

ARTS AND CULTURE

All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition (1987 Constitution, Art. XIV, Sec. 16).

Principal characteristics of arts and culture which the State must promote and protect

1. Foster the preservation, enrichment, and dynamic evolution of a Filipino national culture (1987 Constitution, Art. XIV, Sec. 14).

NOTE: It must be based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

2. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations (1987 Constitution, Art. XIV, Sec. 15).

NOTE: Arts and letters shall enjoy the patronage of the State.

Q: DMCI Project Developers, Inc. (DMCI-PDI) acquired a 7,716.60-square meter lot in the City of Manila for the construction of the Torre de Manila condominium project, a 49-storey building looming at the back of the Rizal Monument in Luneta Park. The Knights of Rizal (KoR) filed a Petition for Injunction against the construction, arguing that it will cause the desecration of the Rizal Monument, which, as a National Treasure, is entitled to full protection of the law. Is the KoR correct?



A: NO. There is no law prohibiting the construction of Torre de Manila. Section 15, Article XIV of the Constitution is not self-executory. Congress passed laws dealing with the preservation and conservation of our cultural heritage, such as Republic Act No. 10066, or the National Cultural Heritage Act of 2009, which empowers the National Commission for Culture and the Arts and other cultural agencies to issue a cease and desist order "when the physical integrity of the national cultural treasures or important cultural properties [is] found to be in danger of destruction or significant alteration from its original state." This law declares that the State should protect the "physical integrity" of the heritage property or building if there is "danger of destruction or significant alteration from its original state." Physical integrity refers to the structure itself – how strong and sound the structure is. The same law does not mention that another project, building, or property, not itself a heritage property or building, may be the subject of a cease and desist order when it adversely affects the background view, vista, or sightline of a heritage property or building. Thus, Republic Act No. 10066 cannot apply to the Torre de Manila condominium project (*Knights of Rizal v. DMCI Homes, G.R. No. 213948, April 25, 2017*).

3. Recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions (*1987 Constitution, Art. XIV, Sec. 17*).

NOTE: It shall consider these rights in the formulation of national plans and policies.

4. Ensure equal access to cultural opportunities through the educational system, public or private cultural entities, scholarships, grants and other incentives, and community cultural centers, and other public venues [*1987 Constitution, Art. XIV, Sec. 18(1)*].

NOTE: The State shall encourage and support researches and studies on the arts and culture.

SPORTS

The State shall promote physical education and encourage sports programs, league competitions, and amateur sports, including training for international competitions, to foster self-discipline, teamwork, and excellence for the development of a healthy and alert citizenry [*1987 Constitution, Art. XIV, Sec. 19(1)*].

NOTE: All educational institutions shall undertake regular sports activities throughout the country in cooperation with athletic clubs and other sectors [*1987 Constitution, Art. XIV, Sec. 19(2)*].



PUBLIC INTERNATIONAL LAW

FUNDAMENTAL CONCEPTS

Public International Law (PIL)

It is a body of legal principles, norms and processes which regulates the relations of States and other international persons and governs their conduct affecting the interest of the international community as a whole (*Magallona, 2005*).

Private International Law (PRIL) or Conflict of Laws

It is that part of law which comes into play when the issue before the court affects some fact, event or transaction that is so clearly connected with a foreign system of law as to necessitate recourse to that system (*Sempio-Diy, Conflict of Laws, 2004 ed., p. 1, citing Cheshire, Private International Law, 1947 ed., p. 6*).

Grand divisions of PIL

1. *Laws of Peace* – They govern normal relations between States in the absence of war;
2. *Laws of War* – They govern relations between hostile or belligerent states during wartime; and,
3. *Laws of Neutrality* – They govern relations between a non-participant State and a participant State during wartime or among non-participating States.

OBLIGATIONS ERGA OMNES

An obligation of every State towards the international community as a whole. All states have a legal interest in its compliance, and thus all States are entitled to invoke responsibility for breach of such an obligation (*Case Concerning The Barcelona Traction, ICJ 1970*).

NOTE: Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law others are conferred by international instruments of universal or quasi-universal character (*Romulo v. Vinuya, G.R. No. 162230, April 29, 2010*).

Examples of obligations *erga omnes*

1. Outlawing of acts of aggression;
2. Outlawing of genocide;
3. Basic human rights; and,

4. Protection from slavery and racial discrimination.

JUS COGENS

(1991, 2007, 2008 Bar)

Also referred to as 'peremptory norm of general international law'.

Literally means "*compelling law*." A norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character (*Vienna Convention on the Law of Treaties, Art. 53*).

Elements of *jus cogens*

1. A norm accepted and recognized by international community of states as a whole;
2. No derogation is permitted; and,
3. Which can only be modified by a subsequent norm having the same character.

Norms Considered as *jus cogens* in character

1. Laws on genocide;
2. Principle of self-determination;
3. Principle of racial non-discrimination;
4. Crimes against humanity;
5. Prohibition against slavery and slave trade;
6. Piracy; and,
7. Torture.

Jus cogens and Rules Creating *erga omnes* Obligations

Jus cogens rules represent the highest source in the (informal) hierarchy of sources of international law. The main difference between a rule of *jus cogens* and a rule that creates an obligation *erga omnes* is that all *jus cogens* rules create *erga omnes* obligations while only some rules creating *erga omnes* obligations are rules of *jus cogens*.

Further, with regard to *jus cogens* obligations the emphasis is on their recognition by the international community 'as a whole,' whilst with regard to obligations *erga omnes* the emphasis is on their nature. The latter mentioned embody moral values which are of universal validity. They are binding because they express moral absolutes from which no State can claim an exemption whatever its political, economic, and social organization.

The legal consequences of violations or rules creating *erga omnes* obligations differ from those of breach of the rules of *jus cogens* in that in addition to the consequences deriving from a breach of *erga omnes* obligations further consequences, specified in



Art. 53 of the Vienna Convention on the Law of Treaties (VCLT), follow from violations of the rules of *jus cogens*.

NOTE: According to Art. 53 of the VCLT, a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

EX AEQUO ET BONO

The concept of *ex aequo et bono* literally means "according to the right and good" or "from equity and conscience."

A judgment based on considerations of fairness, not on considerations of existing law, that is, to simply decide the case based upon a balancing of the equities (*Brownlie, 2003*).

NOTE: Under Art. 38 (1)(c) of the Statute of the International Court of Justice (ICJ), equity is 1) a general principle of international law; and 2) a way of infusing elements of reasonableness and "individualised" justice whenever a law leaves a margin of discretion to a Court in deciding a case.

If the principle of equity is accepted, customary law may be supplemented or modified in order to achieve justice (*Kaczorowska, 2010*).

Under Art. 38(2) of the Statute of the ICJ, means that a decision may be made *ex aequo et bono*, i.e. the court should decide the case not on legal considerations but solely on what is fair and reasonable in the circumstances of the case (equity *contra legem*). However, the parties must expressly authorize the court to decide a case *ex aequo et bono*.

Art. 33 of the United Nations Commission on International Trade Law's Arbitration Rules (1976) provides that the arbitrators shall consider only the applicable law, unless the arbitral agreement allows the arbitrators to consider *ex aequo et bono*, or *amiable compositeur*.

RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW

Monism (Monistic Theory)

Both international law and domestic law are part of a single legal order; international law is automatically incorporated into each nation's legal system and that international law is supreme over domestic law.

Here, international laws or norms are applicable within the municipal system even without a positive act of the state.

Dualism (Dualist or Pluralist Theory)

This affirms that the international law and municipal law are distinct and separate; each is supreme in its own sphere and level of operation.

An international norm or law must first be transformed or adopted into the municipal system through a positive act of the state.

International law vs. Municipal law

BASIS	INTERNATIONAL LAW	MUNICIPAL LAW
<i>Enacting Authority</i>	Adopted by states as a common rule of action.	Issued by a political superior for observance.
<i>Purpose</i>	Regulate relations of states and other international persons.	Regulate relations of individuals among themselves or with their own states.
<i>Scope of Application</i>	Applies to the conduct of States and international organizations, their relations with each other or, their relations with persons, natural or juridical.	Applies to a single country or nation and within a determined territory and to its inhabitants.
<i>Source(s)</i>	Derived principally from treaties, international customs and general principles of law.	Consists mainly of enactments from the lawmaking authority of each state.
<i>Remedy in case of violation</i>	Resolved thru state-to-state transactions.	Redressed thru local administrative and judicial processes.
<i>Scope of Responsibility</i>	Collective responsibility because it attaches directly to the state and not to its	Breach of which entails individual responsibility.



	nationals.	
Role in International Tribunals	Subject to judicial notice before international tribunals.	Not subject to judicial notice before international tribunals (Vienna Convention on the Law of Treaties, Art. 27; Permanent Court of International Justice, 1931, Polish Nationals in Danzig Case).

Doctrine of Incorporation

It means that the rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere.

The fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere. Under the doctrine of incorporation as applied in most countries, rules of international law are given a standing equal, not superior, to national legislative enactments (*Salonga and Yap, Public International Law, Fourth ed., 1974, p. 16*).

NOTE: Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society, the state is automatically obligated to comply with these principles in its relations with other states (*United States of America v. Judge Guinto G.R. No. 76607, February 26 1990*)

Examples of “generally accepted principles of international law”

1. *Pacta sunt servanda*;
2. *Rebus sic stantibus*;
3. *Par in parem non habet imperium* (State Immunity from Suit) (1991, 1994, 1996, 2005, 2006, 2007 Bar);
4. Right of states to self-defense; and,
5. Right to self-determination of people.

Doctrine of Transformation

It provides that the generally accepted rules of international law are not *per se* binding upon the state but must first be embodied in legislation enacted by the lawmaking body and so transformed into municipal law. (*Magallona*)

Types of Transformation Theories

1. *Hard Transformation Theory* – Only legislation can transform international law into domestic law. Courts may apply international law only when authorized by legislation; and,
2. *Soft Transformation Theory* – Either a judicial or legislative act of a state can transform International Law into domestic law.

Pacta Sunt Servanda (2000 Bar)

International agreements must be performed in good faith. A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties. A state which has contracted a valid international agreement is bound to make in its legislation such modification as may be necessary to ensure fulfillment of the obligation undertaken.

Principle of Auto-Limitation (2006 Bar)

Any State may by its consent, express or implied, submit to a restriction of its sovereign rights. There may thus be a curtailment of what otherwise is a plenary power (*Reagan v. CIR, G.R. No. L-26379, December 27, 1969*).

NOTE: While sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws.

The sovereignty of a state therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture: (1) limitations imposed by the very nature of membership in the family of nations and (2) limitations imposed by treaty stipulations (*Tañada v. Angara, G.R. No. 118295, May 2, 1997*).

Correlation of Reciprocity and the Principle of Auto-Limitation



When the Philippines enters into treaties, necessarily, these international agreements may contain limitations on Philippine sovereignty. The consideration in this partial surrender of sovereignty is the reciprocal commitment of other contracting States in granting the same privilege and immunities to the Philippines.

NOTE: For example, this kind of reciprocity in relation to the principle of auto-limitation characterizes the Philippine commitments under WTO-GATT (*Ibid.*).

SOURCES OF PUBLIC INTERNATIONAL LAW

Art. 38 of the Statute of International Court of Justice (SICJ) provides that the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

Primary Sources (2012 Bar)

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting state;
2. International custom, as evidence of a general practice accepted as law; and
3. The general principles of law recognized by civilized nations

Subsidiary Sources

1. Judicial decisions; and
2. Teachings of the most highly qualified publicists of various nations.

NOTE: This category is described as a “**subsidiary means of finding law.**” Judicial decisions and scholarly writings are, in essence, research aids for the Court, used for example to support or refute the existence of a customary norm, to clarify the bounds of general principles of customary rule, or to demonstrate practice under a treaty.

NOTE: Art. 38 (1) of the Statute of the International Court of Justice does not create a hierarchy of sources of international law. It is possible to determine a number of principles and propositions relating to the hierarchy of sources using the general principles of international law such as:

1. *Ex specialis derogat lex generalis* (a special rule prevails over a general rule);
2. The *lex superior derogat lex inferiori* (the laws of a superior hierarchy prevail over the laws of an inferior hierarchy is of relevance with regard to rules of *jus cogens* but not as

a conflict-resolving device with regard to a treaty rule and a customary rule); and,

3. The *lex posteriori derogat lex priori* (if laws are of the same hierarchy the most recent law prevails over earlier inconsistent law.

Formal sources vs. Material sources

BASIS	FORMAL SOURCES	MATERIAL SOURCES
<i>Definition</i>	Refer to the various processes by which rules come into existence.	Refer to the substance and the content of the obligation.
<i>Effect</i>	Gives the force and nature of law.	Supplies the substance of the rule.

INTERNATIONAL CONVENTIONS OR TREATIES

(See discussions under the heading *Treaties*, and the *Vienna Convention on the Law of Treaties*)

INTERNATIONAL CUSTOM OR CUSTOMARY INTERNATIONAL LAW (CIL)

A rule of CIL is one that, whether it has been codified in a treaty, has binding force of law because the community of states treats it and views it as a rule of law. In contrast to treaty law, a rule of CIL is binding upon a state whether or not it has affirmatively assented to that rule.

A customary rule requires the presence of two elements:

1. An **objective element** (general practice) consisting of a relatively uniform and constant State practice; and,
2. A **psychological element** consisting of subjective conviction of a State that it is legally bound to behave in a particular way in respect of a particular type of situation. This element is usually referred to as the *opinio juris sive necessitates*.

The Objective Element – general practice

This is normally constituted by the repetition of



certain behavior on the part of a State for a certain length of time which manifests a certain attitude, without ambiguity, regarding a particular matter. Evidence of state practice may include a codifying treaty, if a sufficient number of states sign, ratify, or accede.

However, as **no particular duration is required** for practice to become law, on some occasions **instant customs** comes into existence. For that reason, a few repetitions over a short period of time may suffice or many over a long period of time or even no repetition at all in so far as an instant custom is concerned. However, the shorter the time, the more extensive the practice would have to be to become law.

A practice must be constant and uniform, in particular with regard to the affected States, but **complete uniformity is not required**. It would suffice that **conduct is generally consistent** with the rule and that instances of practice inconsistent with the rule are treated as breaches of that practice is concerned, this will usually mean widespread but not necessarily universal adherence to the rule.

Indeed, custom may be either general or regional. General customs apply to the international community as a whole. Local or regional customs apply to a group of States or just two States in their relations *inter se*.

The Subjective Element – *opinio juris sive necessitates*

To assume the status of CIL, the rule in question must be regarded by States as being binding in law, i.e. that they are **under a legal obligation to obey it**. The main purpose of the *opinio juris sive necessitates* is to distinguish between customary rule and mere usage followed out of courtesy or habit.

Put another way, *opinio juris*, is the conviction of a State that it is following a certain practice as a matter of law and that, were it to depart from the practice, some form of sanction would, or ought to, fall on it.

NOTE: CIL is shown by reference to treaties, decisions of national and international courts, national legislation, diplomatic correspondence, opinions of international organizations. Each of these may be employed as evidence of state practice, *opinio juris*, or both. In the North Sea Continental Shelf Cases, the ICJ stated that the party asserting a rule of customary international law bears the burden of proving it meets both requirements.

Binding effect of international customs

GR: All States are bound by international customs, including Dissenting States.

XPN: Dissenting States are not bound by international customs if they had consistently objected to it while the project was merely in the process of formation (Persistent Objector Rule).

Dissent, however protects only the dissenter and does not apply to other States. A State joining the international law system for the first time after a practice has become customary law is bound by such practice.

Persistent Objector Rule

If during the formative stage of a rule of customary international law, a State persistently objects to that developing rule it will not be bound by it. Once a customary rule has come into existence, it will apply to all States except any persistent objectors. However, an objecting State, in order to rely on the persistent objector rule, must:

1. Raise its objection at the formative stage of the rule in question;
2. Be consistent in maintaining its objection; and,
3. Inform other States of its objection. This is particularly important with regard to a rule which has been almost universally accepted. If a State remains silent, its silence will be interpreted as acquiescence to the new rule.

NOTE: The burden of proof is on the objecting State. The persistent objector rule does not apply if the CIL has already evolved into a *jus cogens* rule.

The relationship between treaties and international custom

They co-exist, develop each other and, sometimes, clash. If there is a clash between a customary rule and a provision of a treaty because they are of equal authority (except when the customary rule involved is of a *jus cogens* nature whereupon being superior it will prevail), the one which is identified as being the *lex specialis* will prevail. The *lex specialis* will be determined contextually.

Treaties resulting to rules of customary law

Treaties may give rise to rules of customary law when the following conditions are present:

1. The provisions of the treaty should be fundamentally norm-creating in character;
2. Participation in the treaty or convention must include those States whose interest would be



- affected by the provision in question; and,
3. Within the period of time since the adoption of the treaty or convention, State practice must have been both extensive and uniform.

NOTE: The party invoking the rule must be the one to prove that the rule meets all the requirements for the creation of customary law

The treaty may also reflect a custom in three ways:

1. It may be declarative of a custom; or,
2. It may crystallize a rule of custom *in statu nascendi*; or,
3. It may serve to generate a rule of customary law in the future.

GENERAL PRINCIPLES OF LAW

Reference to such principles is to both those which are inferred from municipal laws and those which have no counterparts in municipal law and are inferred from the nature of the international community. If there is no treaty relevant to a dispute, or if there is no rule of customary international law that can be applied to it, the ICJ is directed, under Art. 38 of its Statute, to apply general principles of law.

Simply stated, such principles are gap-filler provisions, utilized by the ICJ in reference to rules typically found in domestic courts and domestic legal systems in order to address procedural and other issues.

Principles inferred from municipal laws

It is sufficient that they are common to several national legal systems and that they are appropriate from the point of view of international law.

Principles relevant only to international law which derive from the specific nature of international law

These principles have no counterparts in national laws. In order to exist, they must be recognized by civilized nations.

NOTE: The main objective of inserting the third source in Art. 38 is to fill in gaps in treaty and customary law and to meet the possibility of a *non liquet*.

Non liquet means the possibility that a court or tribunal could not decide a case because of a 'gap' in law.

e.g: Burden of proof, admissibility of evidence, waiver, estoppel, unclean hands, necessity, and *force majeure*.

DECISIONS OF INTERNATIONAL TRIBUNALS

As there is no binding authority of precedent in international law, international court and tribunal cases do not make law. Judicial decisions are, therefore, strictly speaking not a formal source of law. However, they clarify the existing law on the topic and may, in some circumstances, create a new principle in international law. They can also be considered evidence of State practice.

Judicial decisions, whether from international tribunals or from domestic courts, are useful to the extent they address international law directly or demonstrate a general principle.

Art. 59 of the Statute of the ICJ, provides that:

"decisions of the courts have no binding force, except for the parties and in respect of the case concerned."

This provision shows that:

1. Decision of the ICJ has no binding authority; and,
2. ICJ does not make law.

NOTE: In practice, the ICJ will follow the previous decisions so as to have judicial consistency, or if it does not follow, the court will distinguish its previous decisions from the case actually being heard (*Interpretation of Peace Treaties, 1950*).

TEACHING OF AUTHORITATIVE PUBLICISTS (Including Learned Writers)

This source generally only constitutes evidence of customary law. However, learned writings can also play a subsidiary role in developing new rules of law.

"Teachings" refer simply to the writings of learned scholars. Many students make the mistake of believing that every single published article constitutes an Art. 38(1)(d) "teaching." However, the provision is expressly limited to teachings of "the most highly qualified publicists."

Such works are resorted to by judicial tribunals not for the speculation of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is (*Justice Gray in Paquete Habana case, 175 U.S. 677*).

Requisites to be a most highly qualified publicist:

1. His writings must be fair and impartial representation of law; and,



2. He/she acknowledged authority in the field.

e.g : Grotius, Lauterpacht, Oppenheim, Crawford, Aust, Shaw, and Brownlie. Authoritative sources within this list include the writings of former Judges, the secondary opinions of Judges who are not in the majority of their cases, and documents created by the International Law Commission. Within the context of a specific field, there are additional scholars who would be regarded as "highly qualified publicists."

Burdens of Proof

In the Corfu Channel Case (U.K. v. Albania, 1949), the ICJ set out the burdens of proof applicable to cases before it. The Applicant normally carries the burden of proof with respect to factual allegations contained in its claim by a preponderance of the evidence. The burden falls on the Respondent with respect to factual allegations contained in a cross-claim. However, the Court may draw an adverse inference if evidence is solely in the control of one party that refuses to produce it.

Hard law (2009 Bar)

Means binding laws; to constitute law, a rule, instrument or decision must be authoritative and prescriptive. In international law, hard law includes treaties or international agreements, as well as customary laws. These instruments result in legally enforceable commitments for countries (states) and other international subjects.

Soft law (2009 Bar)

These are non-binding rules of international law. Soft law is of relevance and importance to the development of international law because it:

1. has the potential of law-making, i.e. it may be a starting point for later 'hardening' of non-binding provisions (e.g. UNGA resolutions may be translated into binding treaties);
2. may provide evidence of an existing customary rule;
3. may be formative of the *opinio juris* or of State practice that creates a new customary rule;
4. may be helpful as a means of a purposive interpretation of international law;
5. may be incorporated within binding treaties but in provisions which the parties do not intend to be binding;
6. may in other ways assist in the development and application of general international law.

NOTE: The importance of soft law is emphasized by the fact that not only States but also non-State actors participate in the international law-making process through the creation of soft law. Nevertheless, soft law is made up of rules lacking binding force, and

the general view is that it should not be considered as an independent, formal source of international law despite the fact that it may produce significant legal effects.

Q: Ang Ladlad is incorporated in 2003, and first applied for registration with the COMELEC in 2006. The application for accreditation was denied on the ground that the organization had no substantial membership base. On August 17, 2009, Ang Ladlad again filed a Petition for registration with the COMELEC. On November 11, 2009, after admitting the petitioners evidence, the COMELEC (Second Division) dismissed the Petition on moral grounds. In this Petition before the Court, Ang Ladlad invokes that the Yogyakarta Principles - a set of international principles relating to sexual orientation and gender identity, intended to address documented evidence of abuse of rights of lesbian, gay, bisexual, and transgender (LGBT) individuals, reflects binding principles of international law. Can the Court consider these principles as binding under international law?

A: NO, the Court cannot rely on the application of the Yogyakarta Principle.

There are declarations and obligations outlined in said Principles which are not reflective of the current state of international law, and do not find basis in any of the sources of international law enumerated under Article 38(1) of the Statute of the International Court of Justice. Petitioner also has not undertaken any objective and rigorous analysis of these alleged principles of international law to ascertain their true status.

International law is full of principles that promote international cooperation, harmony, and respect for human rights, most of which amount to no more than well-meaning desires, without the support of either State practice or *opinio juris*. These principles are at best - *de lege ferenda* - and do not constitute binding obligations on the Philippines. Much of contemporary international law is characterized by the soft law nomenclature.

SUBJECTS OF INTERNATIONAL LAW

Subject

They are entities endowed with rights and obligations in the international order and possessing the capacity to take certain kinds of action on international plane. (Kaczorowska, 2010).

The status of the State as subject of law or an international person is conferred by customary or general international law. It possesses *erga omnes*



or objective personality not merely by virtue of recognition on the part of particular states.

NOTE: An entity is a subject of international law if it has “international legal personality”. In other words, subjects must have rights, powers and duties under international law and they should be able to exercise those rights, powers and duties.

The subjects of international law:

1. *Direct subjects*
 - a. States;
 - b. Colonies and dependencies;
 - c. mandates and trust territories (**2003 Bar**); belligerent communities;
 - d. The Vatican;
 - e. The United Nations; international administrative bodies; and
 - f. To a certain extent, individuals.
2. *Indirect subjects*
 - a. International organizations;
 - b. Individuals; and
 - c. Corporations.
3. *Incomplete subjects*
 - a. Protectorates;
 - b. Federal states; and
 - c. Mandated and trust territories.

Object

They are those who indirectly have rights under, or are beneficiaries of international law through subjects of international law.

Subject vs. Object of International Law

BASIS	SUBJECT	OBJECT
Definition	Entity that has rights and responsibilities under that law.	Person or thing in respect of which rights are held and obligations assumed by the subject.
Applicable law	Has international personality that it can directly assert rights and can be held responsible under the law of nations.	Not directly governed by the rules of international law.
Capacity to enter into transaction	It can be a proper party in transactions involving the	Its rights are received and its responsibility

	application of the law of nations among members of international communities.	ies imposed indirectly through the instrumentality of an intermediate agency.
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NOTE: Under the *traditional concept*, only states are considered subjects of international law. However, under the *contemporary concept*, individuals and international organizations are also subjects because they have rights and duties under international law.

Q: Malaya Lolas have approached the Executive Department through the DOJ, DFA, and OSG, requesting assistance in filing a claim against the Japanese officials and military officers who ordered the establishment of the “comfort women” stations in the Philippines. But officials of the Executive Department declined to assist the petitioners, and took the position that the individual claims of the comfort women for compensation had already been fully satisfied by Japan’s compliance with the Peace Treaty between the Philippines and Japan. May we force the government to pursue the claims of comfort women under the doctrine of *jus cogens*?

A: NO, the Philippines is not under any international obligation to espouse petitioners’ claims.

From a domestic law perspective, the Executive Department has the exclusive prerogative to determine whether to espouse petitioner’s claims against Japan. In the international sphere, the only means available for individuals to bring a claim within the international legal system has been when the individual is able to persuade a government to bring a claim on the individual’s behalf. Even then, it is not the individual’s rights that are being asserted, but rather, the states own rights.

The question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches. In this case, the Executive Department has already decided that it is to the best interest of the country to waive all claims of its nationals for reparations against Japan in the Treaty of Peace of 1951.

The State is the sole judge to decide whether its protection will be granted, to what extent it is granted, and when will it cease. It retains, a discretionary power the exercise of which may be



determined by considerations of a political or other nature, unrelated to the particular case. The International Law Commissions (ILCs) Draft Articles on Diplomatic Protection fully support this traditional view. They (i) state that "the right of diplomatic protection belongs to or vests in the State,(ii) affirm its discretionary nature by clarifying that diplomatic protection is a "sovereign prerogative" of the State; and (iii) stress that the state "has the right to exercise diplomatic protection on behalf of a national. It is under no duty or obligation to do so. (*Del Castillo,J*) (*Vinuya v. Romulo, G.R. No. 162230, April 28, 2010*).

International Community

It is the body of juridical entities which are governed by the law of nations.

NOTE: Under the modern concept, it is composed not only of States but also of such other international persons such as the UN, the Vatican City, colonies and dependencies, mandates and trust territories, international administrative bodies, belligerent communities and even individuals.

STATES

It is a community of persons, more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience.

Elements of a State

1. Permanent population (*people*) – An aggregate of individuals of both sexes, who live together as a community despite racial or cultural differences;
2. Defined territory – Fixed portion of the earth's surface which the inhabitants occupy;
3. Government – The agency through which the will of the state is formulated, expressed and realized; and
4. Capacity to enter into relations with other states (*independence/sovereignty*) – The power of a state to manage its external affairs without direction or interference from another state (*Montevideo Convention on the Rights and Duties of States, Art. 1*).

Nation

Nation is defined as a body of people more or less of the same race, language, religion and historical traditions (*Fenwick 104; Sarmiento, 2007*).

Doctrine of Equality of States

All states are equal in international law despite of their obvious factual inequalities as to size, population, wealth, strength, or degree of civilization (*Sarmiento, 2007*).

Principle of State Continuity

From the moment of its creation, the state continues as a juristic being notwithstanding changes in its circumstances provided only that they do not result in loss of any of its essential elements (*Sapphire Case, 11 Wall. 164 in Cruz, 2003*).

Q: If State sovereignty is said to be absolute, how is it related to the independence of other States and to their equality on the international plane?

A: From the standpoint of the national legal order, State sovereignty is the supreme legal authority in relation to subjects within its territorial domain. This is the traditional context in referring to sovereignty as absolute. However, in international sphere, sovereignty realizes itself in the existence of a large number of sovereignties, such that there prevails in fact co-existence of sovereignties under conditions of independence and equality (*Magallona, 2004*).

State sovereignty as defined in international law

It is the right to exercise in a definite portion of the globe the functions of a State to the exclusion of another State. Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of any other State, the functions of a State (*Island of Palmas case: USA v. the Netherlands, April 4, 1928*).

Fundamental rights of a State

1. Existence and self-preservation;
2. Sovereignty and independence;
3. Equality;
4. Property and jurisdiction; and,
5. Diplomatic intercourse.

Extinguishment of a State

The radical impairment of actual loss of one or more of the essential elements of the state will result in its extinction (*Cruz, 2003*).

Succession



State succession takes place when one state assumes the rights and some of the obligations of another because of certain changes in the condition of the latter. This holds true in the event that a state is extinguished or is created (Cruz, 2000).

“Clean Slate” Rule

When one State ceases to exist and is succeeded by another on the same territory, the newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

XPNS

1. When the new State agrees to be bound by the treaties made by its predecessor;
2. Treaties affecting boundary regime (*uti possidetis*); and
3. customary international law.

Rules on state succession

1. *As to territory* – The capacities, rights and duties of the predecessor State with respect to that territory terminate and are assumed by the successor State.
2. *As to State property* – The agreement between the predecessor and the successor State govern; otherwise:
 - a. Where a part of the territory of a State becomes part of the territory of another State, property of the predecessor State located in that territory passes to the successor State;
 - b. Where a State is absorbed by another State, property of the absorbed State, wherever located, passes to the absorbing State; or
 - c. Where a part of a State becomes a separate State, property of the predecessor State located in the territory of the new State passes to the new State.
3. *As to public debts* – the agreement between predecessor and successor State govern; otherwise:
 - a. Where a part of the territory of a State becomes part of the territory of another State, local public debt and the rights and obligations of the predecessor State under contracts relating to that territory are transferred to the successor State;
 - b. Where a State is absorbed by another State, public debt and the rights and obligations under contracts of the absorbed State pass to the absorbing State;
 - c. Where a part of a State becomes a separate State, local public debt and the rights and obligations of the predecessor State under

contracts relating to that territory are transferred to the successor State.

4. *As to treaties*
 - a. When part of the territory of a State becomes the territory of another State, the international agreements of the predecessor State cease to have effect in respect of the territory and international agreements of the successor State come into force there.

NOTE: “Moving Treaty or Moving Boundaries” Rule – A third State may seek relief from the treaty on ground of *rebus sic stantibus*

When a State is absorbed by another State, the international agreements of the absorbed State are terminated and the international agreements of the absorbing State become applicable to the territory of the absorbed State.

NOTE: “Moving Treaty or Moving Boundaries” Rule may apply.

- b. When a part of a State becomes a new State, the new State does not succeed to the international agreements to which the predecessor State was a party, unless, expressly or by implication, it accepts such agreements and the other party or parties thereto agree or acquiesce; or,
- c. Pre-existing boundary and other territorial agreements continue to be binding notwithstanding (*Uti possidetis rule*).

Effects of a change of sovereignty on municipal laws

1. Laws partaking of a political complexion are abrogated automatically
2. Laws regulating private and domestic rights continue in force until changed or abrogated

Effect of change of sovereignty when Spain ceded the Philippines to the US

The political laws of the former sovereign are *not merely suspended but abrogated*. As they regulate the relations between the ruler and the ruled, these laws fall to the ground *ipso facto* unless they are retained or re-enacted by positive act of the new sovereign.

Non-political laws, by contrast, continue in operation, for the reason also that they regulate private relations only, unless they are changed by the new sovereign or are contrary to its institutions. (Cruz, *Public International Law*, 2014).



Effect of Japanese occupation to the sovereignty of the US over the Philippines

Sovereignty is not deemed suspended although acts of sovereignty cannot be exercised by the legitimate authority. Thus, sovereignty over the Philippines remained with the US although the Americans could not exercise any control over the occupied territory at the time. What the belligerent occupant took over was merely the exercise of acts of sovereignty. (*Anastacio Laurel vs. Eriberto Misa, G.R. No. L-409, January 30, 1947*).

Status of allegiance during Japanese occupation

There was no case of suspended allegiance during the Japanese occupation. **Adoption of the theory of suspended allegiance** would lead to disastrous consequences for small and weak nations or states, and would be repugnant to the laws of humanity and requirements of public conscience, for it would allow invaders to legally recruit or enlist the quisling inhabitants of the occupied territory to fight against their own government without the latter incurring the risk of being prosecuted for treason. To allow suspension is to commit political suicide (*Anastacio Laurel vs. Eriberto Misa, ibid*).

NOTE: An inhabitant of a conquered State may be convicted of treason against the legitimate sovereign committed during the existence of belligerency. Although the penal code is a non-political law, it is applicable to treason committed against the national security of the legitimate government, because the inhabitants of the occupied territory were still bound by their allegiance to the latter during the enemy occupation. Since the preservation of the allegiance or the obligation of fidelity and obedience of a citizen or subject to his government or sovereign does not demand from him a positive action, but only passive attitude or forbearance from adhering to the enemy by giving the latter aid and comfort, the occupant has no power, as a corollary of the preceding consideration, to repeal or suspend the operation of the law of treason (*Anastacio Laurel vs. Eriberto Misa, ibid*).

Succession of government

There is succession of government where one government replaces another either peacefully or by violent methods. The integrity of the state is not affected; the state continues as the same international person except only that its lawful representative is changed (*Cruz, 2000*).

Effects of a change of government

1. If the change is peaceful, the new government assumes the rights and responsibilities of the old government;and,

2. If the change was effected thru violence, a distinction must be made.
 - a. Acts of political complexion may be denounced;and,
 - b. Routinary acts of mere governmental administration continue to be effective.

Recognition

It is the acknowledgment extended by a State to:

1. Another State; or
2. Government, or a
3. Belligerent community

Recognition is not an element of the State

The political existence of the state is independent of recognition by the other states. Even before recognition, the state has the right to defend its integrity and independence to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law (*Montevideo Convention on the Rights and Duties of States, Art. 3*).

NOTE: The acknowledgment by a State is coupled with an indication of its willingness to deal with the entity as such under international law.

1. To treat the new State as such;
2. To accept the new government as having authority to represent the State it purports to govern and maintain diplomatic relations with it; and,
3. To recognize in case of insurgents that they are entitled to exercise belligerent rights (*Hackworth, 166*)

Kinds of Recognition

1. *Express recognition*- may be verbal or in writing. It may be extended though:
 - a. Formal proclamation or announcement;
 - b. Stipulation in a treaty;
 - c. Letter or telegram; or,
 - d. Official call or conference.
2. *Implied recognition*- it is when the recognizing state enters into official intercourse with the new member by:
 - a. Exchanging diplomatic representatives with it;
 - b. Bipartite treaty;
 - c. Acknowledging its flag; or,
 - d. Entering into formal relations with it.



Theories of recognition of a State (2004 Bar)(Con-Dec)

1. *Constitutive theory* – Recognition is the last indispensable element that converts the state being recognized into an international person; and,
2. *Declaratory theory* – Recognition is merely an acknowledgment of the pre-existing fact that the state being recognized is an international person (*Cruz, 2003*).

Authority to recognize

It is to be determined according to the municipal law of each State.

In Philippine setting: It is the *President* who determines the question of recognition and his decisions on this matter are considered *acts of state* which are, therefore, *not subject to judicial review*.

Basis of Authority of the President (TRiMP)

- a. Treaty-making power;
- b. Right in general to act as the foreign policy spokesman of the nation;
- c. Military power; and,
- d. Power to send and receive diplomatic representatives.

NOTE: Being essentially discretionary, the exercise of these powers may not be compelled.

Doctrine of Association (2010 Bar)

It is formed when two states of unequal power voluntarily establish durable links. In the basic model, one state, the associate, delegates certain responsibilities to the other, the principal, while maintaining its international status as a state. Free association represents a middle ground between integration and independence.

NOTE: Republic of the Marshall Islands and the Federated States of Micronesia are formerly part of the U.S. Administered Trust Territory of the Pacific Islands.

The associated state arrangement has usually been used as a transitional device of former colonies on their way to full independence.

e.g: Antigua, St. Kitts-Nevis-Anguilla, Dominica, St. Lucia, St. Vincent, and Grenada.

Q: Formal peace talks between the Philippine Government and MILF resulted to the crafting of the GRP-MILF Tripoli Agreement on Peace

(Tripoli Agreement 2001) which consists of three (3) aspects: a.) security aspect; b.) rehabilitation aspect; and c.) ancestral domain aspect.

Various negotiations were held which led to the finalization of the Memorandum of Agreement on the Ancestral Domain (MOA-AD). In its body, it grants “the authority and jurisdiction over the Ancestral Domain and Ancestral Lands of the Bangsamoro” to the Bangsamoro Juridical Entity (BJE). The latter, in addition, has the freedom to enter into any economic cooperation and trade relation with foreign countries.

The MOA-AD further provides for the extent of the territory of the Bangsamoro. With regard to governance, on the other hand, a shared responsibility and authority between the Central Government and BJE was provided. The relationship was described as “associative.” Does the MOA-AD violate the Constitution and the laws?

A: YES. The concept of association is not recognized under the present Constitution. Indeed, the concept implies powers that go beyond anything ever granted by the Constitution to any local or regional government. It also implies the recognition of the associated entity as a state. The Constitution, however, does not contemplate any state in this jurisdiction other than the Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.

The provisions of the MOA indicate that the parties aimed to vest in the BJE the status of an associated state or, at any rate, a status closely approximating it (*Province of North Cotabato v. GRP, G.R. No. 183591, October 14, 2008*).

Recognition of State vs. Recognition of Government

BASIS	STATE	GOVERNMENT
<i>As to extent</i>	On a definite territory of human society politically organized, independent and capable of observing the obligations of international law.	Person or a group of persons capable of binding the state they claim to represent.



	It carries with it the recognition of government Reason: <i>The State recognized has all the essential requisites of a State at the time recognition is extended.</i>	It does not carry with it the recognition of State.
As to its revocability	Irrevocable.	Revocable (<i>if brought about by violent or unconstitutional means</i>).

Requirements for recognition of government

1. The government is stable and effective, with no substantial resistance to its authority;
2. The government must show willingness and ability to discharge its international obligations ; and,
3. The government must enjoy popular consent or approval of the people.

Tests in recognizing a new government

1. *Objective test*- the government must be able to maintain order within the state and repel external aggression; and
2. *Subjective tests*- government is willing to comply with its international obligations

Tobar or Wilson Doctrine (2004 Bar)

It precludes recognition to any government coming into existence by revolutionary means so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country.

Stimson Doctrine

There is recognition of a government established through external aggression (*Nachura, 2009*).

Estrada Doctrine (2004 Bar)

It involves a policy of never issuing any declaration giving recognition to governments and of accepting whatever government is in effective control without raising the issue of recognition. An inquiry into legitimacy would be an intervention in the internal

affairs of another State.

De jure recognition vs. De facto recognition (1998 Bar)

BASIS	RECOGNITION DE JURE	RECOGNITION DE FACTO
Duration	Relatively permanent.	Provisional (<i>e.g.</i> : duration of armed struggle).
Entitlement to properties	Vests title to properties of government abroad.	Does not vest title to properties of government abroad.
Scope of Diplomatic Power	Brings about full diplomatic relations.	Limited to certain juridical relations.

Effects of Recognition (FIPA)

1. Full diplomatic relations are established;
EXP: Where the government recognized is *de facto*
2. Immunity from jurisdiction of courts of law of recognizing State;
3. Right to Possession of the properties of its predecessor in the territory of the recognizing State ; and,

NOTE: This is not applicable as to Recognition of State.

4. All Acts of the recognized state or government are validated retroactively, preventing the recognizing state from passing upon their legality in its own courts.

Belligerency

It exists when the inhabitants of a State rise up in arms for the purpose of overthrowing the legitimate government or; when there is a state of war between two states.

Requisites in recognizing belligerency (OSSO)

1. There must be an Organized civil government directing the rebel forces;
2. The rebels must occupy a Substantial portion of the territory of the state;
3. The conflict between the legitimate government and the rebels must be Serious, making the outcome certain; and
4. The rebels must be willing and able to Observe the laws of war.



Legal Consequences of Belligerency

PERIOD	EFFECT
<i>Before Recognition of the parent state</i>	It is the legitimate government that is responsible for the acts of the rebels affecting foreign nationals and their properties.
<i>After recognition of the parent state</i>	<ol style="list-style-type: none"> 1. The belligerent community is considered a separate state for the purposes of the conflict it is waging against the legitimate government; 2. Their relations for the duration of hostilities be governed by the laws of war; 3. Troops of other belligerent when captured, shall be treated as prisoners of war; 4. Parent state shall no longer be liable for any damage that may be caused to third parties by rebel government; 5. Both belligerents may exercise the right to visit and search upon neutral merchant vessels; and, 6. Both the rebel and the legitimate government shall be entitled to full war status
<i>As to third States</i>	They are under obligation to observe strict neutrality and abide by the consequences arising from that position.

Insurgency vs. Belligerency

BASIS	INSURGENCY	BELLIGERENCY
<i>As to nature</i>	A mere initial stage of war. It involves a rebel movement, and is usually not recognized.	More serious and widespread and presupposes the existence of war between two or more states (first sense) or actual civil war within a single state (second sense).
<i>As to the applicable law</i>	Sanctions to insurgency are governed by municipal law – Revised Penal Code, <i>i.e.</i> rebellion.	Belligerency is governed by the rules on international law as the belligerents may be given international

	personality.
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Recognition of Belligerency

Recognition of belligerency is the formal acknowledgment by a third party of the existence of a state of war between the central government and a portion of that state. Belligerency exists when a sizable portion of the territory of a state is under the effective control of an insurgent community which is seeking to establish a separate government and the insurgents are in *de facto* control of a portion of the territory and population, have a political organization, and are able to maintain such control and conduct themselves according to the laws of war. For example, Great Britain recognized a state of belligerency in the United States during the Civil War.

INTERNATIONAL ORGANIZATIONS

Bodies created by sovereign states and whose functioning is regulated by international law, not the law of any given country. They have functional personality which is limited to what is necessary to carry out their functions as found in the instruments of the organization. It is set up by treaty among two or more states. It enjoys immunity which is based on the need for effective exercise of its functions and is derived from the treaty creating it (*Bernas, 2009*).

NOTE: The term "international organization" is generally used to describe an organization set up by agreement between two or more states. Under contemporary international law, such organizations are endowed with some degree of international legal personality such that they are capable of exercising specific rights, duties and powers. They are organized mainly as a means for conducting general international business in which the member states have an interest.

"Specialized agencies" are international organizations having functions in particular fields (*ICMC vs. Calleja, G.R. No. 85750, September. 28, 1990*).

Q: What does the term "auxiliary status" of some international organizations entail?

A: The term "auxiliary status" of some international organizations, such as the Red Cross Society, means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the state. The PNRC, as a National Society of the International Red Cross and Red Crescent Movement, can neither be "classified as an



instrumentality of the state, so as not to lose its character of neutrality” as well as its independence, nor strictly as a private corporation since it is regulated by international humanitarian law and is treated as an auxiliary of the state (*Liban v. Gordon*, G.R. No. 175352, January 18, 2011).

Q: There has been an assassination on 17 September 1948, by Jewish terrorist organizations, of the UN’s chief truce negotiator , a Swedish national , Count Folke Bernadotte , and of the UN observer , a Frenchman, Colonel André Sérot, while on an official mission for the UN. They were murdered in the eastern part of Jerusalem, which was under Israeli control, at the time when Israel had proclaimed its independence but had not yet been admitted to the UN. The UN considered that Israel had neglected to prevent or punish the murderers and wished to make a claim for compensation under international law. The UN General Assembly sought the advice of the ICJ as to the legal capacity of the UN to make such a claim. Does UN have a legal personality to make a claim?

A: Yes, UN has legal personality.

The Court held that the UN possessed a judicial personality on the international plane and was therefore capable of presenting such a claim with a view to obtaining reparation due in respect of the damage caused to both its assets and its agents (the so-called functional protection). - an objective international legal personality operates *erga omnes*.

The Court has come to the conclusion that the organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is a ‘super-state’, whatever that expression may mean. It does not even imply that all its rights and duties must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.

INDIVIDUALS

The modern trend in public international law is the primacy placed on the worth of the individual person and the sanctity of human rights. Slowly, the recognition that the individual person may properly be a subject of international law is now taking root. The vulnerable doctrine that the subjects of international law are limited only to states was dramatically eroded towards the second half of the

past century. For one, the Nuremberg and Tokyo trials after World War II resulted in the unprecedented spectacle of individual defendants for acts characterized as violations of the laws of war, crimes against peace, and crimes against humanity. Recently, under the Nuremberg principle, Serbian leaders have been persecuted for war crimes and crimes against humanity committed in the former Yugoslavia. These significant events show that the individual person is now a valid subject of international law (*Government of Hong Kong Special Administrative Region v. Hon. Olalia*, G.R. No. 153675, April 19, 2007).

Internal Self-Determination vs. External Self-Determination

Internal Self-Determination	External Self-Determination
<p>People of a states' pursuit of its political, economic, social and cultural development within the framework of an existing State.</p> <p>NOTE: Recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through <i>internal self-determination</i>.</p>	<p>Establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people which constitute modes of implementing the right of self-determination by that people.</p> <p>NOTE: arises only in the most extreme cases and, even then, under carefully defined circumstances.</p>

Exceptional cases in which the right to external self-determination can arise, namely:

1. Where a State is under colonial rule;
2. Subject to foreign domination or exploitation outside a colonial context; and,
3. Blocked from the meaningful exercise of its right to internal self-determination (*Province of North Cotabato v. GRP*, G.R. No. 183591, October 14, 2008)

NOTE: The people’s right to self-determination does not extend to a unilateral right of secession.

Right to Internal Self-Determination of Indigenous Peoples

Indigenous peoples situated within States do not have a general right to independence or secession



from those states under international law, but they do have the right amounting to the right to internal self-determination. Such right is recognized by the UN General Assembly by adopting the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP) (*Province of North Cotabato v. GRP, ibid*).

NOTE: The UNDRIP, while upholding the right of indigenous peoples to autonomy, does not obligate States to grant indigenous peoples the near independent status of an associated state. There is no requirement that States now guarantee indigenous peoples their own police and internal security force, nor is there an acknowledgment of the right of indigenous peoples to the aerial domain and atmospheric space. But what it upholds is the right of indigenous peoples to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired (*Province of North Cotabato v. GRP, ibid.*).

Q: In 1947, the UN made the border between Israel and Palestine known as the Green Line. Following the Palestinian Arab violence in 2002, Israel began the construction of the barrier that would separate West Bank from Israel. Palestinians insisted that the fence is an "apartheid fence" designed to *de facto* annex the West Bank of Israel. The case was submitted to the ICJ for an advisory opinion by the General Assembly of the United Nations under resolution ES-10/14. Did Israel undermine the right of self-determination of the people of Palestine when it created the wall?

A: YES. Construction of the wall severely impedes the exercise by the Palestinian people of its right to self-determination.

The existence of a "Palestinian people" is no longer in issue. Such existence has moreover been recognized by Israel in the exchange of letters. The Court considers that those rights include the right to self-determination, as the General Assembly has recognized on a number of occasions. The route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements. Also, there were further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall as it is contributing to the departure of Palestinian population from certain areas. That construction, along with measures taken previously, has been said to severely impede the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right (*ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 9, 2004*).

DIPLOMATIC AND CONSULAR LAW

Right of legation/ Right of Diplomatic Intercourse

It is the right of the state to send and receive diplomatic missions, which enables states to carry on friendly intercourse. It is governed by the Vienna Convention on Diplomatic Relations (1961).

The exercise of this right is one of the most effective ways of facilitating and promoting intercourse among nations. Through the active right of sending diplomatic representatives and the passive right of receiving them, States are able to deal more directly and closely with each other in the improvement of their mutual intercourse.

NOTE: As the right of legation is *purely consensual*, the State is *not obliged* to maintain diplomatic relations with other States.

If it wants to, a State may shut itself from the rest of the world, as Japan did until the close of the 19th century.

Disadvantage: A policy of isolation would hinder the progress of a State since it would be denying itself of the many benefits available from the international community.

Agents of diplomatic intercourse

1. Head of State;
2. Foreign secretary or minister;
3. Members of diplomatic service;
4. Special diplomatic agents appointed by head of the State; and,
5. Envoys ceremonial.

Diplomatic Corps

It is a body consisting of the different diplomatic representatives who have been accredited to the same local or receiving State. It is headed by a *doyun de corps*, who, by tradition, is the oldest member within the highest rank or, in Catholic countries, the *papal nuncio*.

Functions of a diplomatic mission (Re-P-Pro-N-A-R)

1. **Represent** sending State in receiving State;
2. **Protect** in receiving State interests of sending State and its nationals;
3. **Negotiate** with government of receiving State;
4. **Promote** friendly relations between sending and receiving States and developing their economic, cultural, and scientific relations;



5. Ascertain by all lawful means conditions and developments in receiving State and reporting thereon to government of sending State; and,
6. In some cases, Represent friendly governments at their request.

Classes of heads of a diplomatic mission

1. *Ambassadors* or *nuncio*- accredited to Heads of State and other heads of missions of equivalent rank;
2. *Envoys ministers* and *internuncios*- accredited to heads of State; and,
3. *Charge d' affaires*- accredited to ministers of foreign affairs.

NOTE: The appointment of diplomats is not merely a matter of municipal law because the receiving State is not obliged to accept a representative who is a *persona non grata* to it. Indeed, there have been cases when duly accredited diplomatic representatives have been rejected, resulting in strained relations between the sending and receiving State.

Persona non grata

In international law and diplomatic usage means a person not acceptable (for reasons peculiar to himself) to the court or government to, which it is proposed to accredit him in the character of an ambassador or minister.

Agreation

It is a practice of the States before appointing a particular individual to be the chief of their diplomatic mission in order to avoid possible embarrassment.

It consists of two acts:

1. The *inquiry*, usually informal, addressed by the sending State to the receiving State regarding the acceptability of an individual to be its chief of mission; and
2. The *agreement*, also informal, by which the receiving State indicates to the sending State that such person, would be acceptable.

Letter of Credence

It is the document by which the envoy is accredited by the sending State to the foreign State to which he is being sent. It designates his rank and the general object of his mission, and asks that he be received favorably and that full credence be given to what he says on behalf of his State.

Letter Patent

The appointment of a consul is usually evidenced by

a commission, known sometimes as letter patent or *letred'provision*, issued by the appointing authority of the sending State and transmitted to the receiving State through diplomatic channels.

DIPLOMATIC IMMUNITY (2001, 2005 Bar)

Nature

Diplomatic immunity is essentially a **political question** and the courts should refuse to look beyond the determination by the executive branch.

Q: Besides the head of the mission, who can enjoy diplomatic immunities and privileges?

A: Diplomatic suite or retinue which consists of:

1. *Official staff*- it is made up of the administrative and technical personnel of the mission, including those performing clerical work, and the member of their respective families; and,
2. *Non-official staff*- composed of the household help, such as the domestic servants, butlers, and cooks and chauffeurs employed by the mission.

NOTE: As a rule, however, domestic servants enjoy immunities and privileges only to the extent admitted by the receiving State and insofar as they are connected with the performance of their duties.

Privileges and immunities of diplomatic mission

1. **Personal inviolability** – Members of diplomatic mission shall not be liable for any form of arrest or imprisonment;
2. **Inviolability of premises** – Premises, furnishings and means of transport shall be immune from search, seizure, attachment or execution;
3. **Archives or documents** shall be inviolable;
4. Diplomatic agents are immune from **criminal, civil or administrative liability**;
5. Receiving State shall protect official **communication and official correspondence** of diplomatic mission;
6. Receiving State shall ensure all members of diplomatic mission **freedom of movement and travel**;
7. A diplomatic agent is exempted to give **evidence** as a witness;
8. Exemption from general **duties and taxes** including custom duties with certain exceptions;
9. Use of flag and emblem of sending State on premises of receiving State.



EXCEPTIONS:

1. Any **real action** relating to private immovables situated in the territory of the receiving State unless the envoy holds the property in behalf of the sending State;
2. Actions relating to **succession** where diplomatic agent is involved as executor, administrator, heirs or legatee as a private person and not on behalf of the sending State; and,
3. An action relating to any **professional or commercial activity** exercised by the diplomatic agent in the receiving State outside his official functions.

Modes of waiving diplomatic immunity and privileges

1. *Expressly* by the sending State; or,
2. *Impliedly*, as when the person entitled to the immunity from jurisdiction commences litigation in the local courts and thereby opens himself to any counterclaim directly connected with the principal claim.

NOTE: Waiver of immunity from jurisdiction with regard to civil and administrative proceedings shall not be held to mean implied waiver of the immunity with respect to the execution of judgment, for which a separate waiver shall be necessary.

Q: The U.S. Ambassador from the Philippines and the American Consul General also in the Philippines quarreled in the lobby of Manila Hotel and shot each other. May Philippine courts take jurisdiction over them for trial and punishment for the crime they may have committed?

A: The Philippine courts can take jurisdiction over the Consul but not over the Ambassador. The Ambassador is immune from prosecution for all crimes committed by him whether officially or in his private capacity. The consul is immune from criminal prosecution only for acts committed by him in connection with his official functions.

Q: The Ambassador of State X to the Philippines bought, in the name of his government, two houses and lots at Forbes Park, Makati. One house is used as the chancery and residence of the ambassador, and the other as quarters for nationals of State X who are studying in the University of Santo Tomas. The Registrar of Deeds refused to register the sale and to issue Transfer Certificates of Title in the name of State X on the ground of the prohibition of the Constitution against the alienation of lands in favor of aliens. Is his refusal justified?

A: The prohibition in the Constitution against alienation of lands in favor of aliens does not apply to alienation of the same in favor of foreign governments to be used as chancery and residence of its diplomatic representatives. The receiving State is under obligation to facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission, or to assist the latter in obtaining accommodation in some other way. Therefore, the refusal of the Register of Deeds to register the sale and the issuance of TCT in the name of State X is unjustified.

However, in so far as the house and lot to be used as quarters of the nationals of State X who are studying in the University of Santo Tomas are concerned, the Register of Deeds correctly refused registration. Here, the prohibition in the constitution against the transfer of properties to parties other than the Filipino citizens or corporation 60% of the capital of which is owned by such citizens should be followed.

Q: Huefeng is an economist working with the Asian Development Bank (ADB). He was charged with grave oral defamation before the MeTC for allegedly uttering defamatory words to his co-worker. The MeTC judge received an "office of protocol" from the DFA stating that petitioner is covered by immunity from legal process under the Agreement between the ADB and the Philippine Government. As a result, the judge dismissed the cases filed against the petitioner. However, upon petition for *certiorari* and *mandamus* before the RTC, the decision of the lower court was reversed and set aside. Is Huefeng covered by immunity provided under the agreement?

A: **NO.** He cannot invoke his immunity under the agreement. Under the Agreement, the immunity mentioned therein is not absolute, but subject to the exception that the act was done in "official capacity."

Slandering a person could not possibly be covered by the immunity agreement because our laws do not allow the commission of a crime, such as defamation, in the name of official duty. It is well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice or in bad faith or beyond the scope of his authority or jurisdiction (*Liang vs. People, G.R. No. 125865, Jan. 28, 2000*).

NOTE: Courts cannot blindly adhere and take on its face the communication from the DFA that petitioner is covered by any immunity. The DFA's determination that a certain person is covered by immunity is only preliminary which has no binding



effect in courts. xxx At any rate, it has been ruled that the mere invocation of the immunity clause does not *ipso facto* result in the dropping of the charges (*Liang vs. People, G.R. No. 125865, January 28, 2000*).

Exequatur(1991 Bar)

An authorization from the receiving State admitting the head of a consular post to the exercise of his functions. Thus, an appointee cannot start performing his function unless the *receiving State* issues an exequatur to him.

Diplomats vs. Consuls

Diplomats	They are concerned with political relations of States.
Consuls	They are not concerned with political matters and attend rather to administrative and economic issues.

Kinds of consuls

1. *Consules missi* – Professional or career consuls who are nationals of the sending State and are required to devote their full time to the discharge of their duties; and,
2. *Consules electi* – May or may not be nationals of the sending State and perform their consular functions only in addition to their regular callings

NOTE: Examples of regular callings include acting as notary, civil registrar and similar administrative capacities and protecting and assisting the nationals of the sending State.

Duties of consuls (P-Ob- Prom-Is-Su)

1. **P**rotection of the interests of the sending State and its nationals in the receiving State;
2. **P**romotion of the commercial, economic, cultural, and scientific relations of the sending and receiving States;
3. **O**bservation of the conditions and developments in the receiving State and report the same to the sending State;
4. **I**ssuance of passports and other travel documents to nationals of the sending State and visas or appropriate documents to persons wishing to travel to the sending State; and,
5. **S**upervision and inspection of vessels and aircraft of the sending State.

Sources of authority of consuls

1. *Letter patent* or *letter 'de provision* – Which is the commission issued by the sending State, and
2. *Exequatur* – Which is the permission given them by the receiving State to perform their functions therein.

Immunity of Consuls

Consuls enjoy their own immunities and privileges but not to the same extent as those enjoyed by the diplomats. Like diplomats, consuls are entitled to:

1. Inviolability of their correspondence, archives and other documents
2. Freedom of movement and travel
3. Immunity from jurisdiction for acts performed in their official capacity; and
4. Exemption from certain taxes and customs duties

Liabilities of Consuls

1. Arrest and punishment for grave offenses; and
2. May be required to give testimony, subject to certain exceptions.

NOTE: Members of a consular post are under no obligation to give evidence on the following situations:

- a. Concerning matters connected with the **exercise of their functions**;
- b. To **produce official correspondence** and documents; and,
- c. To give **evidence as expert witness** with regard to the law of the sending State

Immunity of consular offices

They are immune only with respect to that part where the consular work is being performed.

Q: May consular offices be subject to expropriation by the receiving State?

A: YES, for purposes of national defense or public utility.

NOTE: With respect to expropriation by the receiving State, steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid by the sending State (*Art. 31 of the Vienna Convention on Consular Relations and Optional Protocols*).



Diplomatic Immunity vs. Consular Immunity

BASIS	DIPLOMATIC	CONSULAR
Scope as to buildings and premises	Premises of the mission includes the building or parts of building and the land irrespective of the ownership used for the purpose of the mission including the residence of the head of mission.	Consular premises includes the buildings or parts of buildings and the land irrespective of ownership used exclusively for the purposes of consular posts.
On entry of agents of the receiving state	GR: The agents of the receiving state may not enter the premises of the mission. XPN: Consent of the head of the mission.	GR: The agents of the receiving state may not enter the consular premises. XPN: Consent of the head of the consular post. Consent is assumed in case of fire or other disasters requiring prompt protective action.
As to inviolability of baggage	Personal baggage of a diplomatic agent shall not be opened.	Consular bag shall not be opened. It may be requested that the bag be opened in their presence by an authorized representative of the receiving state if they have serious reason to believe that the bag contains objects of other articles, documents, correspondence or articles.
As a witness before the court	Not obliged to give evidence as a witness.	May be called upon to attend as a witness; if declined, no coercive measure

		or penalty may be applied.
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Differences in the privileges or immunities of diplomatic envoys and consular officers from the civil and criminal jurisdiction of the receiving State

1. A **diplomatic agent** shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction; while

XPNs:

- a. A *real action* relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purpose of the mission;
- b. An *action relating to succession* in which the diplomatic agent is involved as executor, administrator, heir or legatee as private person and not on behalf of the sending State; and
- c. An *action relating to any professional or commercial activity* exercised by the diplomatic agent in the receiving State outside of his official functions (*Vienna Convention of Diplomatic Relations, Art. 31*).

2. A **consular officer** does not enjoy immunity from the criminal jurisdiction of the receiving State and are not amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

However, this does not apply in respect of a civil action either:

1. Arising out of a contract concluded by a consular officer in which he did not enter expressly or impliedly; and
2. By a third party for damages arising from an accident in the receiving State caused by a vehicle, vessel or aircraft (*Vienna Convention on the Consular Relations, Arts. 41 and 43*).

Grounds for Termination of Consular Office (2D-2W-RN)

1. **Death** of consular officer
2. **Recall**
3. **Dismissal**
4. **Notification** by the receiving State to the sending State that it has ceased to consider as member of the consular staff
5. **Withdrawal** of his exequatur by the receiving State.
6. **War** – outbreak of war between his home State and the receiving State.

Immunity of International Organizations



Q: Trade Union of the Philippines and Allied Services (TUPAS) filed with then Ministry of Labor and Employment a Petition for Certification Election among the rank and file members employed by International Catholic Migration Commission (ICMC), an international organization rendering voluntary humanitarian services in the Philippines. ICMC opposed the petition of TUPAS on the ground that it is an international organization registered with the United Nations, hence, enjoys diplomatic immunity.

Meanwhile, the Philippine Government and the Ford and Rockefeller Foundations signed a Memorandum of Understanding establishing the International Rice Research Institute (IRRI), which was intended to be an autonomous, philanthropic, tax-free, non-profit, non-stock organization designed to carry out the principal objective of conducting basic research on rice plant. IRRI has an existing local union, the Kapisanan ng Manggagawa at TAC sa IRRI (Kapisanan), which filed a petition for direct certification election with the DOLE. The latter dismissed the petition on the ground that Pres. Decree No. 1620 conferred upon it the status of an international organization and granting it immunity from all civil, criminal and administrative proceedings under Philippine laws. Do ICMC and IRRI enjoy diplomatic immunity?

A: YES. P.D. 1620 is constitutional. There can be no question that diplomatic immunity has been granted to ICMC and IRRI. The grant of immunity from local jurisdiction to ICMC and IRRI is clearly necessitated by their international character and respective purposes. The objective is to avoid the danger of partiality and interference by the host country in their internal workings. The exercise of jurisdiction by the Department of Labor in these instances would defeat the very purpose of immunity, which is to shield the affairs of international organizations, in accordance with international practice, from political pressure or control by the host country to the prejudice of member States of the organization, and to ensure the unhampered performance of their functions (*ICMC vs. Calleja, G.R. No. 85750, Sept. 28, 1990*).

NOTE: There are basically three propositions underlying the grant of international immunities to international organizations. These principles, contained in the ILO Memorandum are stated thus: 1) international institutions should have a status which protects them against control or interference by any one government in the performance of functions for the effective discharge of which they

are responsible to democratically constituted international bodies in which all the nations concerned are represented; 2) no country should derive any national financial advantage by levying fiscal charges on common international funds; and 3) the international organization should, as a collectivity of States members, be accorded the facilities for the conduct of its official business customarily extended to each other by its individual member States. The theory behind all three propositions is said to be essentially institutional in character. "It is not concerned with the status, dignity or privileges of individuals, but with the elements of functional independence necessary to free international institutions from national control and to enable them to discharge their responsibilities impartially on behalf of all their members. The *raison d'être* for these immunities is the assurance of unimpeded performance of their functions by the agencies concerned (*ICMC vs. Calleja, G.R. No. 85750, September. 28, 1990*).

DIPLOMATIC RELATIONS

Grounds for termination of diplomatic relations under municipal law (RADAR)

1. Resignation;
2. Accomplishment of the purpose;
3. Death;
4. Abolition of the office; and
5. Removal.

Grounds for termination of diplomatic relation under international law

1. *War* – Outbreak between the sending and the receiving State;
2. *Extinction* of either the sending State or the receiving State; and
3. *Recall* – Demanded by the receiving State when the foreign diplomat becomes *persona non grata*

Termination of diplomatic relations does not terminate consular relations between the sending and receiving States

Consuls belong to a class of State agents distinct from that of diplomatic officers. They are not clothed with diplomatic character and are not accredited to the government of the country where they exercised their consular functions; they deal directly with local authorities

They do not represent their State in its relations with foreign States and are not intermediaries through whom matters of State are discussed between governments. Consuls look mainly after the commercial interest of their own State in the territory of a foreign State.



TREATIES

Treaty (2003 Bar)

A treaty is generally defined as agreements between and among States, by which parties obligate themselves to act, or refrain from acting, according to the terms of the treaty.

However, under the Vienna Convention on the Law of Treaties (VCLT), a treaty has been defined as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

Essential Characteristics of Treaties

1. It becomes binding on the parties to it by virtue of their consent; and
2. while treaties will, in most cases, be written instruments concluded between States, the term applies equally to unwritten agreements and to agreements between States and international organizations and between international organizations.

Many treaties, particularly those of a multilateral nature designed to establish general rules of common application, exhibit a mixture of ‘legislative’ characteristics. A provision of a treaty may:

1. Purport to codify existing rules of customary law, e.g. Art. 55 of the 1982 Convention on the Law of the Sea which provides for the recognition of the EEZ;
2. Crystallize a developing rule of law, firmly establishing a legal footing a situation which has previously been part of the practice of a limited number of States; or
3. Generate rules of law independently of the previous practice of State, e.g. prohibition on the threat or use of force in international relations.

Two kinds of a treaty

1. Law-making treaties (normative treaties); and
2. Treaty contracts

Law-making treaties or Normative Treaties

Treaties which are concluded by a large number of States for purposes of:

1. Declaring, confirming, or defining there understanding of what the law is on a particular subject.

2. Stipulating or laying down new general rules for future international conduct; and

3. Creating new international institutions.

It lays down rules of general or universal application and are intended for future and continuing observance.

Treaty Contracts

Resemble contracts in that they are concluded to perform contractual rather than normative functions. It usually concerns the regulation of a narrow area of practice between two States (e.g. trade agreements). Such treaties may lead to the formation of general international law through the operation of the principles governing the development of customary rules in the following ways:

1. A series of treaties each of which lay down similar rule may produce a rule of customary international law to the same effect.
2. A rule contained in a treaty originally concluded between a limited number of parties may subsequently be accepted or imitated as a general rule.
3. A treaty may have evidential value as to the existence of a rule which has crystallized into law by an independent process of development.

VIENNA CONVENTION ON THE LAW OF TREATIES

Vienna Convention on the Law of Treaties (VCLT) (2012 Bar)

The law of *treaties* is the body of rules which govern what is a treaty, how it is made and brought into force, amended, terminated, and generally operates. Apart from issues of *jus cogens*, it is not concerned with the substance of a treaty (the rights and obligations created by it), which is known as treaty law. Although the VCLT does not occupy the whole ground of the law of treaties, it covers the most important areas and is the indispensable starting point for any description of the law. For good reason, the VCLT has been called the treaty on treaties.

It was adopted on May 22, 1969 and opened for signature on May 23, 1969. The Convention entered into force on January 27, 1980.

Scope



1. The VCLT sets out the law and procedure for the making, operation, and termination of a treaty;
2. It does not apply to all treaties, only those between States (*Art. 1 VCLT*). Nor is it concerned with the substance of a treaty as such. That is a matter for the negotiating States;
3. The VCLT as a treaty does not apply retroactively to treaties concluded before its entry into force. Only rules in the VCLT that codify or reflect rules of CIL apply; and
4. Because the VCLT resulted from a codification project, many of its rules are consistent with otherwise applicable rule of CIL.

FUNDAMENTAL PRINCIPLES OF THE LAW OF TREATIES

1. The principle of free consent – A state cannot be bound by treaty to which it has not consented. Free consent is vital for initial adoption and subsequent development of a particular treaty as it ensures that a State remains in control of the commitments it has made under the relevant treaty;

2. The principle of pacta sunt servanda – Literally means agreements must be kept. Embodied in Art. 26 VCLT, which states that; 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith. Therefore, a contracting party will be held responsible for breach of a treaty.' Applies only to treaties which are in force, not to invalid, suspended or terminated treaties; and,

3. The principle of good faith – Recognized as the foundation of international legal order. States and non-State actors are required to comply with binding obligations imposed upon them by international law, irrespective of whether such obligations derive from treaties, customary rules, or any other source of international law. It is all encompassing as it even imposes obligations on a State in the pre-ratification stage.

It applies throughout the life of a treaty, from its negotiation, through its performance to its termination.

Each time a State is in breach of the principle of *pacta sunt servanda* it also violates the principle of good faith.

Essential requisites of a valid treaty

1. It must be a written instrument or instruments between two or more parties;

2. The parties must be States within the meaning of international law (IL);
3. It must be governed by IL; and
4. It must be intended to create legal obligations.

Exclusions

1. Those concluded between states and other subjects of IL;
2. Agreements not in writing; and
3. Those which are governed by the national law system chosen by the parties.

Usual steps in the treaty-making process (NeS-RA-ER)

1. **Negotiation** – Conducted by the parties to reach an agreement on its terms;
2. **Signature** – The signing of the text of the instrument agreed upon by the parties;
3. **Ratification** – The act by which the provisions of a treaty are formally confirmed and approved by the State;

NOTE: In our jurisdiction, the power to ratify is vested in the President. The role of the Senate is limited only to giving or withholding its consent, or concurrence, to the ratification.

There are two constitutional provisions that require the concurrence of the Senate on treaties or international agreements

Section 21, Article VII deals with treaties or international agreements in general, in which case, the concurrence of at least two-thirds (2/3) of all the Members of the Senate is required to make the subject treaty, or international agreement, valid and binding on the part of the Philippines. This means it forms part of Philippine law by virtue of transformation.

The involvement of the Senate in the treaty-making process manifests the adherence of the Philippine system of government to the principle of checks and balances. This indispensable participation of the legislative branch by way of concurrence provides the "check" to the ratification of the treaty by the executive branch.

In contrast, Section 25, Article XVIII is a special provision that applies to treaties which involve the presence of foreign military bases, troops or facilities in the Philippines. Under this provision, the concurrence of the Senate is only one of the requisites to render compliance with the constitutional requirements and to consider the agreement binding on the Philippines. Section 25, Article XVIII further requires that "foreign military bases, troops, or facilities" may be allowed in the



Philippines only by virtue of a treaty duly concurred in by the Senate, ratified by a majority of the votes cast in a national referendum held for that purpose if so required by Congress, and recognized as such by the other contracting state (*BAYAN vs. Zamaora*, G.R. No. 138570, October 10, 2000).

4. **Accession** – A State can accede to a treaty only if invited or permitted to do so by the contracting parties. Such invitation or permission is usually given in the accession clause of the treaty itself;
5. **Exchange of instruments of ratification**; and
6. **Registration with the United Nations.**

Traditional methods of expressing consent to a treaty

1. Signature – The legal effects of signature are as follows:

- a. The signing of a treaty may represent simply an authentication of its text. Where signature is subject to ratification, acceptance or approval, signature does not establish consent to be bound;

NOTE: The act of signing a treaty creates an obligation of good faith on the part of the signatory: to refrain from acts calculated to frustrate the objects of the treaty and to submit the treaty to the appropriate constitutional machinery for approval. Signature does not, however, create an obligation to ratify.

- b. In the case of a treaty which is only to become binding upon ratification, acceptance or approval, that treaty, unless declaratory of customary law, will not be enforceable against a party until one of those steps is taken; and
- c. Where a treaty is not subject of ratification, acceptance or approval, but a State's signature will signify consent to be bound. The consent of a State to be bound by a treaty is expressed by the signature of its representatives when:
 - i. The treaty provides that signature shall have that effect;
 - ii. It is otherwise established that the negotiating states were agreed that signature should have that effect; or
 - iii. The intention of the State to give effect to the signature appears from the full powers of the representative or was expressed during the negotiations.

2. Ratification – A formal act whereby one State declares its acceptance of the terms of the treaty and undertakes to observe them. Ratification is used to describe two distinct procedural acts:

- a. **Ratification in municipal law** – is the formal act of the appropriate organ of the State effected in accord with national constitutional law.
- b. **Ratification in international law** – Ratification is a procedure which brings a treaty into force for the State concerned by establishing its definitive consent to be bound by the particular treaty. International law is not concerned with the requirements of its constitutional law.

NOTE: Despite the fact that a treaty may be ratified by nothing more than the signature of the relevant State's representative, in many case States insist upon a ratification procedure consisting of more formal steps.

Ratification is so required when under Art. 14(1) of the VCLT:

1. A treaty provides for such consent to be expressed by means of ratification;
2. It is otherwise established that the negotiating States were agreed that ratification should be required;
3. The representative of the State has signed the treaty subject to ratification; or
4. The intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

Accession or adherence or adhesion

Occurs when a State, which did not participate in the negotiating and signing of the relevant treaty, formally accepts its provisions. It may occur before or after a treaty has entered into force. It is only possible if it is provided for in the treaty, or if all the parties to the treaty agree that the acceding State should be allowed to accede.

Q: A petition for *mandamus* was filed in the SC to compel the Office of the Executive Secretary and the Department of Foreign Affairs to transmit (even without the signature of the President) the signed copy of the Rome Statute of the International Criminal Court (ICC) to the Senate of the Philippines for its concurrence or



ratification – in accordance with Sec. 21, Art. VII of the 1987 Constitution.

Petitioners contend that ratification of a treaty, under both domestic law and international law, is a function of the Senate. That under treaty law and customary international law, Philippines has a ministerial duty to ratify the Rome Statute. Respondents on the other hand, argued that executive department has no duty to transmit the Rome Statute to the Senate for concurrence. Decide.

A: The power to ratify treaties does not belong to the Senate.

Under the Constitution the power to ratify is vested in the *President subject to the concurrence of the Senate*. The President has the discretion even after the signing of the treaty by the Philippine representative whether or not to ratify a treaty. The signature of the representative does not signify final consent, it is ratification that binds the state to the provisions of the treaty and renders it effective.

The role of the Senate is limited only to giving or withholding its consent, concurrence to the ratification. It is within the President to refuse to submit a treaty to the Senate or having secured its consent for its ratification, refuse to ratify it. Such decision is within the competence of the President alone, which cannot be encroached by this Court via writ of mandamus (*Pimentel v. Executive Secretary, G.R. No. 158088, July 6, 2005*).

The House of Representatives (HoR) cannot take active part in the conduct of foreign relations, particularly in entering into treaties and international agreements. As held in *US v. Curtiss Wright Export Corporation (299 US 304)*, it is the President alone who can act as representative of the nation in the conduct of foreign affairs. Although the Senate has the power to concur in treaties, the President alone can negotiate treaties and Congress is powerless to intrude into this.

NOTE: However, if the matter involves a treaty or an executive agreement, the HoR may pass a resolution expressing its views on the matter.

Protocol de Clôture

It is a final act and an instrument which records the winding up of the proceedings of a diplomatic conference and usually includes a reproduction of the texts of treaties, conventions, recommendations and other acts agreed upon and signed by the plenipotentiaries attending the conference.

Instances when a third State who is a non-signatory may be bound by a treaty

1. When a treaty is a *mere formal expression of customary international law*, which, as such is enforceable on all civilized states because of their membership in the family of nations;
2. Under Art. 2 of its charter, the UN shall ensure that non-member States act in accordance with the principles of the Charter so far as may be *necessary for the maintenance of international peace and security*. Under Art. 103, obligations of member-states shall prevail in case of conflict with any other international agreement including those concluded with non-members;
3. The *treaty itself may expressly extend its benefits* to non-signatory States; and
4. Parties to apparently unrelated treaties may also be linked by the *most-favored nation clause*.

Effectivity date of a treaty

1. In such manner and upon such date as it may provide or as the negotiating States may agree; or,
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

NOTE:

GR: A State may not invoke the fact that its consent to the treaty was obtained in violation of its internal law.

XPN: If the violation was manifest and concerned a rule of its internal law of fundamental importance.

A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Reservation

It is a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State.

Reservation is NOT applicable when:

1. The treaty itself provides that no reservation shall be admissible;
2. The treaty allows only specified reservations which do not include the reservation in question; and,
3. The reservation is incompatible with the object and purpose of the treaty.

Effects of Reservation and of Objections to



Reservations

1. Modifies, for the reserving State in its relations with that other party, the provisions of the treaty to which the reservation relates to the extent of the reservation;
2. Modifies those provisions to the same extent for that other party in its relations with the reserving State;
3. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*; and
4. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Judicial Review of Treaties

Even after ratification, the Supreme Court has the power of judicial review over the constitutionality of any treaty, international or executive agreement and must hear such case *en banc*.

Rules in case of conflict between a treaty and a custom

1. *If the treaty comes after a particular custom-* treaty prevails, as between the parties to the treaty
2. *If the custom develops after the treaty-* custom prevails it being an expression of a later will.

A treaty or conventional rule may not qualify as a norm of *jus cogens* character

Treaty rule binds only States that are parties to it and even in the event that all States are parties to a treaty, they are entitled to terminate or withdraw from the treaty.

NOTE: If a treaty at the time of its conclusion, conflicts with *jus cogens*, it is void. **(2008 Bar).**

Treaty vs. Executive Agreement (2015 Bar)

BASIS	TREATY	EXECUTIVE AGREEMENT
<i>As to nature</i>	It involves basic political issues and changes in national policy.	These are adjustments of details in carrying out well established national policies.
<i>As to</i>	Permanent international	Merely temporary

<i>permanence</i>	agreements.	arrangements.
<i>Concurrence of Senate</i>	It needs the concurrence of the Senate.	It needs no concurrence from the Senate.

Q: Enhanced Defense Cooperation Agreement (EDCA) authorizes the U.S. military forces to have access to and conduct activities within certain "Agreed Locations" in the country. It was not transmitted to the Senate on the Executive's understanding that to do so was no longer necessary. Accordingly, in June 2014, the DFA and the U.S. Embassy exchanged diplomatic notes confirming the completion of all necessary internal requirements for the agreement to enter into force in the two countries. Is the Executive branch of government correct?

A: YES. The EDCA need not be submitted to the Senate for concurrence because it is in the form of a mere executive agreement, not a treaty. Under the Constitution, the President is empowered to enter into executive agreements on foreign military bases, troops, or facilities if (1) such agreement is not the instrument that allows the entry of such and (2) if it merely aims to implement an existing law or treaty.

EDCA is in the form of an executive agreement since it merely involves "adjustments in detail" in the implementation of the Mutual Defense Treaty and the Visiting Forces Agreement. These are existing treaties between the Philippines and the U.S. that have already been concurred in by the Philippine Senate and have thereby met the requirements of the Constitution under Art XVIII, Sec 25. Because of the status of these prior agreements, EDCA need not be transmitted to the Senate (*Saguisag v. Executive Secretary, G.R. No. 212426, January 12, 2016*).

Applicable rules when there is conflict between a treaty and a domestic legislation

The rule will depend on which court is deciding.

1. International Court - will uphold treaty obligation in general.

NOTE: However, Art. 46 of the VCLT states that:

- a. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.



b. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

2. Domestic Court

a. **Treaty vs. Constitution** – The Constitution will always prevail.

b. **Treaty vs. Statute** - When the two instruments relate to the same subject, **try to give effect to both; if inconsistent**, legal techniques on statutory construction would be employed. Some of such rules say that the “later in time prevails” or that the “specific law prevails over the general”.

Modification of a treaty

GR: A treaty may not be modified without the consent of *all* the parties.

XPN: If allowed by the treaty itself, two states may modify a provision only insofar as their countries are concerned.

Grounds of nullity affecting the consent of a party to a treaty

1. Corruption of a representative of a State – ‘corruption’ must be a ‘substantial influence. A small courtesy or favor shown to a representative will be insufficient;
2. Coercion of a representative of a State – it must be directed at the representative personally or his/her family;
3. Coercion of a State – it must be shown that the conclusion of a treaty has been procured by the threat or use of force;
4. Fraud;
5. Manifest violation of its internal law – the alleged violation of a domestic law must concern fundamental provisions which relate to the State’s treaty-making power and must be evident to any State acting by normal practice and good faith;
6. Essential error – an error, whether unilateral or mutual, must neither concern a question of law nor the wording of text of a treaty agreed by the parties. It must relate to a fact or situation which was assumed at the time when a treaty was concluded and formed an essential basis of its consent. Further, a State will not be able to claim error if by its own conduct it contributed to it; and
7. Violations of restrictions on the competence of the representative of a State – the restrictions on the competence must have been notified to the other parties.

Grounds of nullity which lead to nullity of a treaty for all contracting parties

1. A treaty is void if at the time of its conclusion it conflicts with a rule of *jus cogens*;
2. If a new *jus cogens* emerges, any existing treaty which is in conflict with that rule becomes void and terminates.

Grounds for the suspension of a treaty

A treaty may be suspended in six situations. Two of them are:

1. Where all contracting parties agree to suspend the operation of a treaty, or some of its provisions;
2. Where two or more parties agree to suspend its operation temporarily between themselves provided this is either allowed under the relevant treaty or not prohibited.

NOTE: The remaining situations are set out in Articles 59-62 of the VCLT and are the same as for termination of a treaty

Grounds for termination of a treaty

A party in the following situations has a choice either to suspend or terminate the relevant treaty:

1. Material breach of a treaty
2. Impossible for a party to perform its obligations
3. *Rebus sic stantibus*
4. All contracting parties to an earlier treaty are also parties to a later treaty and the two treaties relate to the same subject matter.

NOTE: Additionally a treaty can be terminated:

1. When the termination of a treaty is in accordance with the terms of the treaty.
2. Parties to the relevant treaty agreed to terminate the treaty.
3. If the treaty is in conflict with a *jus cogens* rule.

Termination vs Suspension

When a treaty is suspended, it is still valid but its operation is suspended temporarily, either for all the parties or some of them. On the other hand, when a treaty is terminated, it is no longer in force as it has ended its existence.

Doctrine of *rebus sic stantibus*

It states that a fundamental change of circumstances which determined the parties to accept a treaty, if it has resulted in a radical transformation of the extent



of the obligations imposed by it, may under certain conditions, afford the party affected a *ground to invoke the termination* of the treaty.

The change must have *increased the burden* of the obligations to be executed to the extent of rendering performance essentially different from the original intention.

Requisites of *rebus sic stantibus* (Not-IR, Must-URIS)

1. The change must **not** have been caused by the party Invoking the doctrine;
2. The doctrine **cannot** operate **Retroactively**, *i.e.*, it must not adversely affect provisions which have already been complied with prior to the vital change in the situation;
3. The change must have been **Unforeseen** or unforeseeable *at the time of the perfection* of the treaty;
4. The doctrine must be invoked within a **Reasonable time**;
5. The duration of the treaty must be **Indefinite**; and
6. The change must be so **Substantial** that the foundation of the treaty must have altogether disappeared.

Limitation on the application of the principle of *rebus sic stantibus*

The principle of *rebus sic stantibus* cannot be invoked as a ground for terminating or withdrawing from a treaty if:

1. The treaty establishes a boundary; or
2. The fundamental change is the result of a breach by the party invoking it of an obligation under the treaty or of any other obligation owed to any other party to the treaty.

NATIONALITY AND STATELESSNESS

Nationality

It is membership in a political community with all its concomitant rights and obligations. It is the tie that binds the individual to his State, from which he can claim protection and whose laws he is obliged to obey.

NOTE: *Citizenship* has a more exclusive meaning in that it applies only to certain members of the State accorded more privileges than the rest of the people who owe it allegiance. Its significance is municipal, not international.

Multiple Nationality

It is the possession by an individual of more than

one nationality. It is acquired as the result of the concurrent application to him of the conflicting municipal laws of two or more States claiming him as their national.

Statelessness (1995 Bar)

It is the condition or status of an individual who is either:

1. *De jure stateless person* – Stripped of his nationality by their former government and without having an opportunity to acquire another; or
2. *De facto stateless person* – One who possesses a nationality whose country does not give him protection outside his own country and who is commonly referred to as refugee (*Frivaldo v. COMELEC, G.R. No. 123755, June 28, 1996*).

Consequences of Statelessness (1995 Bar)

1. No State can intervene or complain in behalf of the Stateless person for an international delinquency committed by another State in inflicting injury upon him;
2. He cannot be expelled by the State if he is lawfully in its territory except on grounds of national security or public order (**1994 Bar**); and
3. He cannot avail himself of the protection and benefits of citizenship like securing for himself a passport or visa and personal documents.

Rights of stateless persons

A Stateless person is not entirely without right, protection or recourse under the Law of Nations. Under the Convention in Relation to the Status of Stateless Persons, the contracting States agree to accord the stateless persons within their territories treatment at least as favorable as that accorded their nationals with respect to:

1. Freedom of religion;
2. Access to the courts;
3. Rationing of products in short supply;
4. Elementary education;
5. Public relief and assistance;
6. Labor legislation; and,
7. Social Security.

NOTE: They also agree to accord them treatment not less favorable than that accorded to aliens generally in the same circumstances. The Convention also provides for the issuance of identity papers and travel documents to the Stateless persons.

Status of foundlings under Philippine laws

As a matter of law, foundlings are as a class, natural-born citizens. While the 1935 Constitution's



enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either. The deliberations of the 1934 Constitutional Convention show that the framers intended foundlings to be covered by the enumeration, pursuant to the amendment proposed by Sr. Rafols. Though the Rafol's amendment was not carried out, it was not because there was any objection to the notion that persons of "unknown parentage" are not citizens but only because their number was not enough to merit specific mention.

Foundlings are likewise citizens under international law. The common thread of the Universal Declaration of Human Rights, United Nations Convention on the Rights of the Child and the International Covenant on Civil and Political Rights obligates the Philippines to grant nationality from birth and ensure that no child is stateless. This grant of nationality must be at the time of birth, and it cannot be accomplished by the application of our present naturalization laws.

Furthermore, the principles stated in Art. 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws under which a foundling is presumed to have the nationality of the country of birth. While the Philippines is not a party to the Hague Convention, it is a signatory to the Universal Declaration on Human Rights, which effectively affirms Art. 14 of the 1930 Hague Convention (*Poe v. Comelec, G.R. No. 221697, March 8, 2016*).

Doctrine of Indelible Allegiance

It states that an individual may be compelled to retain his original nationality notwithstanding that he has already renounced it under the law of another State whose nationality he has acquired.

Doctrine of Effective Nationality

A person having more than one nationality shall be treated as if he had only one – either the nationality of the country in which he is habitually and principally resident or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

NOTE: Also known as **Nottebohm principle** (*International Court of Justice, Liechtenstein v. Guatemala, 1955*) or the **Genuine Link Doctrine**.

Doctrine of Genuine Link

It states that the bond of nationality must be real and effective in order that a State may claim a person as its national for the purpose of affording him diplomatic protection.

Measures states have taken to prevent statelessness

In the Convention on the Conflict of Nationality Laws of 1930, the Contracting States agree to accord nationality to persons born in their territory who would otherwise be stateless. The Convention on the Reduction of Statelessness of 1961 provides that if the law of the contracting States results in the loss of nationality, as a consequence of marriage or termination of marriage, such loss must be conditional upon possession or acquisition of another nationality.

STATE RESPONSIBILITY

Doctrine of State Responsibility (2010 Bar)

A State may be held responsible for an international delinquency, directly or indirectly, imputable to it which causes injury to the national of another State. Liability will attach to the State where its treatment of the alien falls below the international standard of justice or where it is remiss in according him the protection or redress that is warranted by the circumstances.

NOTE: No government can be held responsible for the act of rebellious bodies of men committed in violation of its authority, where it is itself guilty of no breach of good faith, or of no negligence in suppressing insurrection.

Elements of state responsibility

1. An act or omission in violation of International Law
2. Attributable to the State
3. Causing damage to a third State either directly or indirectly to a national of the third State.

Kinds of state responsibility

1. *Direct State responsibility* – Where the international delinquency was committed by superior government officials or organs like the chief of State or the national legislature, liability will attach immediately as their acts may not be effectively prevented or reversed under the constitution or laws of the State.
2. *Indirect State responsibility* – Where the offense is committed by inferior government officials or by private individuals. The State will be held liable only if, by reason of its indifference in preventing or punishing it, it can be considered to have connived in effecting its commission.

Requisites for the enforcement of the doctrine of State Responsibility (NER)



1. Nationality of the Claimant/The Doctrine of Effective Nationality/The Genuine Link Doctrine;
2. The injured alien must first Exhaust all local remedies; and
3. He must be Represented in the international claim for damages by his own State.

Calvo Clause

A stipulation by which an alien waives or restricts his right to appeal to his own state in connection with any claim arising from the contract and agrees to limit himself to the remedies available under the laws of the local state.

NOTE: This cannot be interpreted to deprive the alien's state of the right to protect or vindicate his interests in case they are injured in another state, as such waiver can legally be made not by the alien but by his own state.

Elements of an Internationally Wrongful Act (AB)

1. Act or omission is Attributable to the State under international law; and
2. Constitutes a Breach of an international obligation of the State.

NOTE: Every internationally wrongful act of a State entails the international responsibility of that State.

Acts or situations attributable to the State

1. *Acts of the State organs* – Acts of State organs in their capacity provided by law or under instructions of superiors;
2. *Acts of other persons* – If the group of persons was in fact exercising elements of the governmental authority in the absence or default of the official authorities and circumstances such as to call for the exercise of those elements of authority; and,
3. *Acts of revolutionaries* – Conduct of an insurrectional movement which becomes the new government of a State or part of a State.

Theory of Objective or Strict Liability

With respect to state responsibility, the theory provides that fault is unnecessary for State responsibility to be incurred. Its requisites are:

1. Agency; and,
2. Casual connection between the breach and the act or omission imputable to the State.

Culpa (fault) is relevant when:

1. The breach results from acts of individuals not

- employed by the state or from the activities of licenses or trespassers on its territory;
2. A state engages in lawful activities, in which case responsibility may result from *culpa* in executing these lawful activities;
3. Determining the amount of damages; and,
4. Due diligence or liability for culpa is stipulated in a treaty.

Motive (intent) is relevant when:

1. The existence of a deliberate intent to injure may have an effect on the remoteness of the damage and may help to establish the breach of duty; and
2. Motive and intent may be a specific element in defining permitted conduct.

Relief available where a State is liable for an internationally wrongful act

1. *Declaratory relief* – Declaration by a court that as to the illegality of an act constitutes a measure of satisfaction or reparation in the broad sense;

NOTE: Available when this is, or the parties deem this, the proper way to deal with a dispute or when the object is not to give satisfaction for the wrong received but only to recognize the liability.

2. *Satisfaction* – A measure other than restitution or compensation which an offending State is bound to take;

NOTE: Its object is often either:

- a. An apology and other acknowledgment of wrongdoing;
- b. Punishment of individuals concerned; or
- c. Taking of measures to prevent a recurrence.
3. *Restitution* – Involves wiping out all the consequences of the breach and re-establishing the situation which would probably have existed had the act not been committed; or

NOTE: It can either be in the form of legal restitution or specific restitution.

- a. *Legal Restitution* is declaration that an offending treaty, law, executive act, or agreement, is invalid.
- b. *Specific Restitution* is a restitution in kind or payment of a sum corresponding to the value of the restitution, and the award for losses sustained which would not be covered by the first two.



4. *Compensation* – Payment of money as a valuation of the wrong done.

NOTE: The compensation must correspond to the value which restitution in kind would bear; the award of damages for loss sustained which would not be covered by restitution in kind or payment in place of it.

Pecuniary satisfaction vs. Compensation

BASIS	PECUNIARY SATISFACTION	COMPENSATION
<i>As to nature</i>	A token of regret and acknowledgment of wrongdoing ("monetary sorry").	To make up for or repair the damage done.

State's exercise of diplomatic protection

When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded to them.

These obligations, however, are neither absolute nor unqualified. An essential distinction should be drawn between:

1. *Obligations of the State towards the international community as a whole* - concern of all States. All States can be held to have a legal interest in their protection; they are obligations *erga omnes*.
2. *Obligations the performance of which is the subject of diplomatic protection* - cannot be held, when one such obligation in particular is in question, in a specific case, that all States have a legal interest in its observance (*Case Concerning Barcelona Traction, Light and Power Company, Limited, February 5, 1970*).

JURISDICTION OF STATES

In Public International Law, it is the right of a State to exercise authority over persons and things within its boundaries subject to certain exceptions.

BASIS OF JURISDICTION

Territoriality Principle

A state has absolute, but not necessarily exclusive, power to prescribe, adjudicate and enforce rules of conduct that occurs within its territory (2005, 2009

Bar).

NOTE: An aspect of this principle is the "Effects Doctrine" – which provides that a state has jurisdiction over acts occurring outside its territory but having effects within it.

Extra-territoriality

The exemption of foreign persons from the jurisdiction of the State of residence and it arises from treaty provisions.

Nationality Doctrine

A State may exercise jurisdiction over its nationals, with respect to their conduct, whether within or outside its territory.

(For more extensive discussion on Nationality and Statelessness, please refer to the previous discussion devoted solely on that matter)

Protective Principle

Any State has the right to punish acts even if committed outside its territory, when such acts constitute attacks against its security, as long as that conduct is generally recognized as criminal by states in the international community (2009 Bar).

e.g: plots to overthrow the government, forging its currency, and plot to break its immigration regulations.

Universality Principle

Certain offenses are so heinous and so widely condemned that any state that captures an offender may prosecute and punish that person on behalf of the international community regardless of the nationality of the offender or victim or where the crime was committed (2005 Bar).

Q: Prior to the outbreak of WWII, Adolf Eichmann was an Austrian by birth who volunteered to work for the Security Service in Berlin. He rose through the ranks and eventually occupied the position of Referant for Jewish Affairs. He oversaw the transport and deportation of Jewish persons and explored the possibility of setting up a slave Jewish state in Madagascar.

He was captured by Israeli Security Forces in Argentina and handed over to the District Court of Jerusalem to stand for war crimes against humanity and crimes against the Jewish people. He was convicted of all 15 counts and sentenced



to death.

Does the District Court of Jerusalem have jurisdiction to try the case in light of the fact that Eichmann is a foreign national and crimes were committed on foreign territory?

A: YES. The principle of territorial sovereignty merely requires that the State exercises its power to punish within its own borders, not outside them; that subject to this restriction every State may exercise a wide discretion as to the application of its laws and the jurisdiction of its courts in respect of acts committed outside the State; and that only in so far as it is possible to point to a specific rule prohibiting the exercise of this discretion. That view was based on the following two grounds: (1) It is precisely the conception of State sovereignty which demands the preclusion of any presumption that there is a restriction on its independence; and (2) Even if it is true that the principle of the territorial character of criminal law is firmly established in various States, it is no less true that in almost of such States criminal jurisdiction has been extended so as to embrace offenses committed outside its territory.

However, it is the universal character of the crimes in question which vests in every State the power to try those who participated in the preparation of such crimes, and to punish them therefor. It follows that the State which prosecutes and punishes a person for that offense acts solely as the organ and agent of the international community, and metes out punishment to the offender for his breach of the prohibition imposed by the law of nations (*Attorney-General of the Government of Israel v. Eichmann, Israel Sup. Ct. 1962*).

Passive Personality Principle

It authorizes states to assert jurisdiction over offenses committed against their citizens abroad. It recognizes that each state has a legitimate interest in protecting the safety of its citizens when they journey outside national boundaries.

EXEMPTIONS FROM JURISDICTION

Act of State Doctrine

A State should not inquire into the legal validity of the public acts of another State done within the territory of the latter (*Nachura, 2009*).

CONFLICTS OF JURISDICTION

Modes of addressing conflicts of jurisdiction

1. *Balancing Test* – It is a judicial doctrine

whereby a court measures competing interest—as between individual rights and governmental powers, or between state authority and federal supremacy – and decides which interest should prevail (*Black's Law Dictionary*).

The court employed a tripartite analysis to determine whether to assume jurisdiction or not. *First*, was there an actual or intended effect on American foreign commerce. *Second*, is the effect sufficiently large to present a cognizable injury to the plaintiffs and, therefore, a civil violation of the anti-trust laws. *Third*, are the interests of, and link to, the United States including effects on American foreign commerce sufficiently strong, vis-à-vis those of other nations, to justify an assertion of extraordinary authority (*Timberlane Lumber Co. v. Bank of America, 549 F2d 597*).

2. *International Comity* – Even when a state has basis for exercising jurisdiction, it will refrain from doing so if its exercise will be unreasonable. Unreasonableness is determined by evaluating various factors: **(L²C²E)**
 - a. Link of the activity to the territory of the regulating state;
 - b. the Connection, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated;
 - c. the Character of the activity to be regulated;
 - d. the existence of justified Expectations that might be protected or hurt by the regulation; and,
 - e. the Likelihood of conflict with regulation by another state.
3. *Forum non conveniens* – If in the whole circumstances of the case it be discovered that there is a real unfairness to one of the suitors in permitting the choice of a forum which is not the natural or proper forum, either on the ground of convenience of trial or the residence or domicile of parties or of its being the locus contractus, or locus solutionis, then the doctrine of forum non conveniens is properly applied.

NOTE: It is the discretionary power that allows courts to dismiss a case where another court, or forum, is much better suited to hear the case (*Piper Aircraft v. Reyno, 454 U.S. 235 December 8, 1981*).

TREATMENT OF ALIENS

Standards to be used by States in treating aliens within their territory



1. *National treatment/equality of treatment* – Aliens are treated in the same manner as nationals of the State where they reside; and
2. *Minimum international standard* – However harsh the municipal laws might be, against a State's own citizens, aliens should be protected by certain minimum standards of humane protection.

NOTE: States protect aliens within their jurisdiction in the expectation that their own nationals will be properly treated when residing or sojourning abroad.

Right of asylum

In international law, it is the competence of every State inferred from its territorial supremacy to allow a prosecuted alien to enter and to remain on its territory under its protection and thereby grant asylum to him.

Refugee

Any person who is outside the country of his nationality or the country of his former habitual residence because he has or had well-founded fear of persecution by reason of his race, religion, nationality, membership of a political group or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

Elements before one may be considered as a refugee (ONPer)

1. The person is **Outside** the country of his nationality, or in the case of Stateless persons, outside the country of habitual residence;
2. The person lacks **National** protection; and
3. The person fears **Persecution** in his own country.

NOTE: The second element makes a refugee a Stateless person. Only a person who is granted asylum by another State can apply for refugee status; thus the refugee treaties imply the principle of asylum.

Refugees v. Internally displaced persons

Refugees are people who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of his nationality, are unable or owing to such fear, are unwilling to avail themselves of the protection of that country, or who not having a nationality and

being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fear are unwilling to return to it (*United Nations Convention Relating to the Status of Refugees, 1951 Sec. A par. 2*).

While *internally displaced persons* are those who have been forced to flee their homes, suddenly or unexpectedly in large numbers as a result of armed conflict, internal strife, systematic violation of human rights, or natural or man-made disaster, and, who are within their territory of their country (*Analytical Report of the United Nations' Secretary-General on Internally Displaced Persons, February 14, 1992*)

Principle of Non-Refoulment

Posits that a State may not deport or expel refugees to the frontiers of territories where their life or freedom would be put in danger or at risk (*Magallona, 2005*).

EXTRADITION (1996 BAR)

The right of a foreign power, created by treaty, to demand the surrender of one accused or convicted of a crime within its territorial jurisdiction, and the correlative duty of the other State to surrender.

Basis of extradition

The extradition of a person is required only if there is a treaty between the State of refuge and the State of origin. As a gesture of comity, however, a State may extradite anyone. Furthermore, even with a treaty, crimes which are political in character are exempted.

Fundamental Principles

1. Based on the consent of the State expressed in a treaty;
2. *Principle of specialty* – A fugitive who is extradited may be tried only for the crime specified in the request for extradition and included in the list of offenses in the extradition treaty, unless the requested State does not object to the trial of such person for the unlisted offense (**1993 Bar**);
3. Any person may be extradited, whether he is a national of the requesting State, of the State of refuge or of another State. He need not be a citizen of the requesting State;
4. Political or religious offenders are generally not subject to extradition (**2002 Bar**);

NOTE: *Attentat clause* is a provision in an extradition treaty which states that the murder or assassination of the head of a state or any



member of his family will not be considered as a political offense and therefore extraditable.

5. The offense must have been committed within the territory of the requesting State or against its interest; and
6. *Double criminality rule* – The act for which the extradition is sought must be punishable in both the requesting and requested States (1991, 2007 Bar).

Common bars to extradition

1. Failure to fulfill dual criminality;
2. Political nature of the alleged crime;
3. Possibility of certain forms of punishment;
4. Jurisdiction; and
5. Citizenship of the person in question.

Procedure

1. File/issue request through diplomatic representative with:
 - a. Criminal charge and warrant of arrest;
 - b. Recital of facts;
 - c. Text of applicable law designating the offense;
 - d. Pertinent papers; and
 - e. Decision of conviction.
2. DFA forwards request to DOJ.
3. DOJ files petition for extradition with RTC.
4. Upon receipt of a petition for extradition and its supporting documents, the judge must study them and make, as soon as possible, a *prima facie finding* whether:
 - a. They are sufficient in form and substance;
 - b. They show compliance with the Extradition Treaty and Law; and
 - c. The person sought is extraditable.

At his discretion, the judge may require the submission of further documentation or may personally examine the affiants and witnesses of the petitioner. If, in spite of this study and examination, no *prima facie finding* is possible, the petition may be dismissed at the discretion of the judge.
5. On the other hand, if the presence of a *prima facie* case is determined, then the magistrate must immediately issue a warrant for the arrest of the extraditee, who is at the same time summoned to answer the petition and to appear at scheduled summary hearings;
6. Hearing (provide counsel *de officio* if necessary);
7. Appeal to CA within 10 days whose decision shall be final and executory;
8. Decision forwarded to DFA through the DOJ; and
9. Individual placed at the disposal of the authorities of requesting State – costs and expenses to be shouldered by requesting State.

Extradition vs. Deportation (1993 Bar)

BASIS	EXTRADITION	DEPORTATION
<i>As to authority</i>	Effected at the request of the State of origin.	Unilateral act of the local State.
<i>As to cause</i>	Based on offenses committed in the State of origin.	Based on causes arising in the local State.
<i>As to effect</i>	Calls of the return of the fugitive to the State of origin.	Undesirable alien may be deported to a State other than his own or the State of origin.

Due process in extradition proceeding

Q: Is a respondent in an extradition proceeding not entitled to notice and hearing before the issuance of a warrant of arrest?

A: NO.

1. On the Basis of the Extradition Law

It is significant to note that Sec. 6 of P.D. 1069, our Extradition Law, uses the word “immediate” to qualify the arrest of the accused. Hearing entails sending notices to the opposing parties, receiving facts and arguments from them, and giving them time to prepare and present such facts and arguments. Arrest subsequent to a hearing can no longer be considered “immediate.” The law could not have intended the word as a mere superfluity but, on the whole, as a means of imparting a sense of urgency and swiftness in the determination of whether a warrant of arrest should be issued.

By using the phrase “if it appears,” the law further conveys that accuracy is not as important as speed at such early stage. The trial court is not expected to make an *exhaustive* determination to ferret out the true and actual situation, immediately upon the filing of the petition. From the knowledge and the material then available to it, the court is expected merely to get a good first impression, a *prima facie finding*, sufficient to make a speedy initial determination as regards the arrest and detention of the accused.

2. On the Basis of the Constitution

Even Sec. 2 of Art. III of our Constitution, which is invoked by Jimenez, does not require a notice or a hearing before the issuance of a warrant of arrest. To determine probable cause for the



issuance of arrest warrants, the Constitution itself requires only the examination, under oath or affirmation, of *complainants* and the *witnesses they may produce*. There is no requirement to notify and hear the *accused* before the issuance of warrants of arrest (*U.S. v. Purganan, G.R. No. 148571, September 24, 2002*).

Q: Does an extraditee's have a right of access to the evidence against him?

A: It depends. During the executive phase of an extradition proceeding, an extraditee does not have the right of access to evidence in the hands of the government. But during the judicial phase he has (*Secretary v. Judge Lantion, GR. No. 139465, October 17, 2000*)

Nature of extradition proceeding

Extradition is not a criminal proceeding, thus, an extradition proceeding does not call into operation all the rights of an accused provided in the bill of rights (**1996, 2005 Bar**).

Validity of a petition for bail in extradition cases

Sec. 11, Art. II of our Constitution which provides: "*The State values the dignity of every human person and guaranteed full respect for human rights.*" The Philippines, therefore, has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified.

The Philippine authorities are under obligation to make available to every person under detention such remedies which safeguards their fundamental right to liberty. These remedies include the right to be admitted to bail (*Government of Hong Kong Special Administrative Region v. Olalia, Jr., G.R. No. 153675, April 19, 2007*).

Requisites for granting bail in extradition cases

The possible extraditee must show upon a clear and convincing evidence that:

1. He will *not be a flight risk or a danger to the community*; and,
2. There exist *special, humanitarian and compelling* circumstances.

Rights of a person arrested and detained in another State

1. Right to have his request complied with by the receiving State to so inform the consular post of his condition;
2. Right to have his communication addressed to the consular post forwarded by the receiving State accordingly; and
3. Right to be informed by the competent authorities of the receiving State without delay his rights as mentioned above.

Retroactive application of extradition

In *Wright v. Court of Appeals (G.R. No.113213, August 15, 1994)*, it was held that the retroactive application of the Treaty of Extradition does not violate the prohibition against *ex post facto* laws, because the Extradition Treaty is neither a piece of criminal legislation nor a criminal procedural statute. It merely provided for the extradition of persons wanted for offenses already committed at the time the treaty was ratified.

INTERNATIONAL HUMAN RIGHTS LAW

Human Rights

Those liberties, immunities and benefits, which all human beings should be able to claim 'as of right' of the society in which they live (*Henkin, "Human Rights", 1994*).

International Human Rights Law

The law which deals with the protection of individuals and groups against violations by governments of their internationally guaranteed rights, and with the promotion of these rights (*Buerghthal*).

NOTE: International human rights are divided into 3 generations, namely:

1. *First generation:* civil and political rights;
2. *Second generation:* economic, social and cultural rights; and
3. *Third generation:* right to development, right to peace and right to environment.

Classification of Human Rights

1. Individual rights; and
2. Collective rights (*right to self-determination of people; the permanent sovereignty over natural resources*)

Main instruments of human rights

1. Universal Declaration of Human Rights;
2. The International Covenant on Economic, Social and Cultural Rights; and
3. International Covenant on Civil and Political Rights and its two Optional Protocols.



NOTE: The Philippines is a signatory to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. This instrument is a multilateral treaty governing the protection of migrant workers and families. Concluded on December 18, 1990, it entered into force on July 1, 2003 after the threshold of 20 ratifying states was reached in March 2003. The Committee on Migrant Workers (CMW) monitors implementation of the Convention, and is one of the seven UN-linked human rights treaty bodies.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The basic international statement of the inalienable rights of human beings. It is the first comprehensive international human rights instrument. It covers civil and political rights, and economic, social and cultural rights.

NOTE: Rights covered by UDHR are customary international law, hence, even during the times when the bill of rights under the Constitution are inoperative, rights under UDHR remained in effect (*Republic v. Sandiganbayan, G.R. No. 104768, July 21, 2003*).

Basic rights guaranteed by the UDHR

1. All human beings are born free and equal in dignity and rights;
2. Everyone is entitled to all the rights and freedoms in this Declaration, without distinction of any kind such as race, color, sex, religion, property, or birth. No distinction shall also be made on the basis of the political or international status of a country or territory to which a person belongs;
3. Right to life, liberty and security of person;
4. Right against slavery or servitude;
5. Right against torture or to cruel, inhuman and degrading treatment or punishment;
6. Right to be recognized everywhere as a person before the law;
7. Right to equal protection of the law;
8. Right to an effective remedy before courts for acts violating fundamental rights;
9. Right against arbitrary arrest, detention or exile;
10. Right to a fair and public hearing by an independent and impartial tribunal;
11. Right to be presumed innocent until proven guilty;
12. Right to privacy, family, home or correspondence;

13. Right to freedom of movement and residence; right to leave any country, including one's own and to return to one's own country;
14. Right to seek and enjoy in another country asylum from persecution; however, this may not be invoked in the case of prosecutions genuinely arising from non-political crimes or acts contrary to the principles of the United Nations;
15. Right to a nationality and right against arbitrary deprivation of such right;
16. Right to marry, entered into freely and with full consent, without any limitation due to race, nationality or religion; entitled to equal rights to marriage, during marriage and dissolution; the family is the natural and fundamental group of society and is entitled to protection by society and State.;
17. Right to own property alone as well as in association with others; right against arbitrary deprivation of such property;
18. Right to freedom of thought, conscience and religion;
19. Right to freedom of opinion and expression;
20. Right to freedom of peaceful assembly and association; no one may be compelled to belong to an association;
21. Right to suffrage; right to take part in the government of one's country, directly or through representatives; right of equal public service in one's country;
22. Right to social security;
23. Right to work/labor, free choice of employment, just and favorable conditions of work; right to equal pay for equal work; right to form and join trade unions;
24. Right to rest and leisure, including reasonable working hours and periodic holidays with pay;
25. Right to a standard of living adequate for the health and being of one's self and his family; motherhood and childhood are entitled to special care and assistance;
26. Right to education; and
27. Right to freely participate in the cultural life of the community, enjoy the arts and share in scientific advancement.

Under the Declaration, everyone is entitled to a social and international order in which the rights and freedoms in this Declaration can be fully realized. The exercise of these rights and freedoms are subject only to such limitations as are determined by law, for the purpose of recognition and respect of rights of others, for public order and general welfare.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS



International Covenant on Civil and Political Rights

This is a multilateral treaty adopted by the United Nations General Assembly on December 16 1966, and in force from March 23 1976. It commits its parties to respect the civil and political rights of individuals. As of April 2014, the Covenant has 74 signatories and 168 parties.

Rights guaranteed in the International Covenant on Civil and Political rights

1. Right to self-determination;
2. Right to an effective remedy;
3. Equal right of men and women to the enjoyment of all the civil and political rights ;
4. Right to life;
5. Not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, freedom from medical or scientific experimentation except with his consent **(1992, 2010 Bar)**;
6. Freedom from slavery and servitude;
7. Right to liberty and security of person;
8. Right to be treated with humanity and with respect for the inherent dignity of the human person;
9. No imprisonment on the ground of inability to fulfill a contractual obligation;
10. Right to liberty of movement and freedom to choose his residence;
11. Right to a fair and public hearing by a competent, independent and impartial tribunal established by law;
12. No one shall be held guilty of a criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed;
13. Right to recognition everywhere as a person before the law;
14. Right to privacy;
15. Right to freedom of thought, conscience and religion;
16. Right to freedom of expressions;
17. Right of peaceful assembly;
18. Right of freedom of association;
19. Right to marry and to found a family;
20. Right to such measures of protection as are required by his status as a minor, name and nationality;
21. Right to participation, suffrage and access to public service;
22. Right to equal protection of the law; and,
23. Right of minorities to enjoy their own culture, to profess and practice their religion and to use their own language.

NOTE:

GR: In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, parties may take measures to derogate from their obligations to the extent strictly required by the exigencies of the situation.

XPNS: There can be no derogation from the following:

1. Right to life
2. Freedom from torture or cruel, inhuman or degrading punishment
3. Freedom from slavery
4. Freedom from imprisonment for failure to fulfill a contractual obligation
5. Freedom from *ex post facto* laws
6. Right to recognition everywhere as a person before the law
7. Freedom of thought, conscience and religion

Torture

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (*United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [UNCTO] Effective June 26, 1987*).

NOTE: It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Obligations of the State Parties in the UNCTO

1. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency or any order from a superior officer or a public authority may be invoked as a justification of torture;
2. No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture;
3. All acts of torture are offenses under a State Party's criminal law;
4. State Parties shall afford the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences;
5. To ensure that education and information regarding the prohibition against torture are



fully included on persons involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention, or imprisonment;

6. To keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any case of torture;
7. To ensure a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed;
8. To ensure that an individual subjected to torture has the right to complain and have his case promptly and impartially examined by competent authorities;
9. To ensure that the victim obtains redress and has an enforceable right to fair and adequate compensation;
10. To ensure that any statement established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made; and
11. To prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture when such acts are committed by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity.

Instances when a state party may establish its jurisdiction over offenses regarding torture

1. When the offenses are committed in any territory under its jurisdiction or on board a ship or aircraft registered in the State;
2. When the alleged offender is a national of that State;
3. When the victim was a national of that State if that State considers it appropriate; and
4. Where the alleged offender is present in any territory under its jurisdiction and it does not extradite him.

NOTE: Nos. 1 to 3 are considered as extraditable offences. In the absence of an extradition treaty, the UNCTO may be considered as the legal basis for extradition. Such offenses shall be treated, for the purpose of extradition, as if they have been committed not only in the place in which they occurred but also in the territories of the State required to establish their jurisdiction.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

International Covenant on Economic, Social and Cultural Rights

It is a multilateral treaty adopted by the United Nations General Assembly on December 16 1966, and in force from January 3 1976. It commits its parties to work toward the granting of economic, social, and cultural rights. As of 2015, the Covenant has 164 parties.

Rights guaranteed thereunder

1. Right of Self Determination;
2. Right to work and accompanying rights thereto;
3. Right to Social Security and other social rights;
4. Adequate standard of living which includes:
 - a. Right to adequate housing;
 - b. Right to adequate food; and,
 - c. Right to adequate clothing
5. Right to health;
6. Right to education; and
7. Cultural Rights.

INTERNATIONAL HUMANITARIAN LAW (IHL) AND NEUTRALITY

International Humanitarian Law (IHL)

A set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.

Importance of IHL

It is one of the most powerful tools the international community has at its disposal to ensure the safety and dignity of people in times of war. It seeks to preserve a measure of humanity, with the guiding principle that even in war there are limits.

Fundamental principles of IHL

1. Parties to armed conflict are prohibited from employing weapons or means of warfare that cause unnecessary damage or excessive suffering (*Principle of prohibition of use of weapons of a nature to cause superfluous injury or unnecessary suffering*);
2. Parties to armed conflict shall distinguish between civilian populace from combatants and spare the former from military attacks (*Principle of distinction between civilians and combatants*);
3. Persons *hors de combat* and those who do not take part in hostilities are entitled to respect for



- their lives and their moral and physical integrity. They shall be protected and treated humanely without any adverse distinction;
4. It is prohibited to kill or injure an enemy who surrenders or who is a *hors de combat*;
 5. The wounded and the sick shall be protected and cared for by the party who is in custody of them. Protection shall cover medical personnel, establishments, transports and equipment. The emblem of Red Cross or the Red Crescent is a sign of such protection and must be respected; and
 6. Parties who captured civilians and combatants shall respect the latter's rights to life, dignity, and other personal rights.

Essential rules of IHL

1. The parties to a conflict must at all times distinguish between the civilian population and combatants;
2. Neither the civilian population as a whole nor individual civilians may be attacked;
3. Attacks may be made sole against military objectives;
4. People who do not or can no longer take part in the hostilities are entitled to respect for their lives and for their physical and mental integrity and must be treated with humanity, without any unfavorable distinction whatever;
5. It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting;
6. Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare;
7. It is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses and excessive suffering;
8. The wounded and sick must be collected and cared for by the party to the conflict which has them in its power;
9. Medical personnel and medical establishments, transports and equipment must be spared. The red cross or red crescent is the distinctive sign indicating that such persons and objects must be respected; and
10. Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions and must be protected against all acts of violence or reprisals; entitled to exchange of news with their families and receive aid and enjoy basic judicial guarantees.

Application of IHL

IHL concerns two situations:

1. International armed conflicts, which involve at least two countries; and
2. Armed conflicts that take place in one country (such as those between a government and rebel forces).

NOTE: IHL applies to all parties to a conflict regardless of who started it.

"New" conflicts covered by the IHL

1. *Anarchic conflicts* – It is a situation where armed groups take advantage of the weakening or breakdown of the State structures in an attempt to grab power; and
2. *Those in which group identity becomes a focal point* – These groups exclude the adversary through "ethnic cleansing" which consists in forcibly displacing or even exterminating populations. This strengthens group feeling to the detriment of the existing national identity, ruling out any possibility of coexistence with other groups.

Branches of IHL

1. *Law of Geneva* – Designed to safeguard military personnel who are no longer taking part in the fighting and people not actively participating in the war.

NOTE: It includes the:

- a. Wounded and Sick in the Field;
- b. Wounded, Sick and Shipwrecked at Sea;
- c. Prisoners of War; and
- d. Civilians.

2. *Law of the Hague* – Establishes the rights and obligations of belligerents in the conduct of military operations, and limits the means of harming the enemy.

NOTE: Belligerents are inhabitants of a State who rise up in arms for the purpose of overthrowing the legitimate government.

Persons protected under IHL

IHL protects those who are not, or no longer, participating in hostilities, such as:

1. Civilians;
2. Medical and religious military personnel;
3. Wounded, shipwrecked and sick combatants; and
4. Prisoners of war.

NOTE: Recognizing their specific needs, IHL grants women and children additional protection.

Protection under IHL



1. IHL prohibits the use of weapons which are particularly cruel or which do not distinguish between combatants and civilians.
2. The parties to a conflict are required to:
 - a. Distinguish between combatants and civilians, and to refrain from attacking civilians;
 - b. Care for the wounded and sick and protect medical personnel;
 - c. Ensure that the dignity of prisoners of war and civilian internees is preserved by allowing visits by International Committee of the Red Cross delegates.

International Humanitarian Law (IHL) vs. Human Rights Law

INTERNATIONAL HUMANITARIAN LAW	HUMAN RIGHTS LAW
Application	
Situations of armed conflict only.	Applicable at all times in war and peace alike.
Permissibility of derogation	
No derogations are permitted under IHL because it was conceived for emergency situations namely armed conflict.	Some human rights treaties permit governments to derogate from certain rights, in situations of public emergency.
Purpose	
Aims to protect people who do not or are no longer taking part in hostilities. The rules embodied in IHL impose duties on all parties of a conflict.	Tailored primarily for peacetime, and applies to everyone. Their principal goal is to protect individuals from arbitrary behavior by their own governments.
Consequence to states	
Obliges states to take practical and legal measures, such as enacting penal legislation and disseminating IHL.	States are bound by human rights law to accord national law with international obligations.
Applicable mechanisms	
Provides for several mechanisms that help its implementation. Notably, states are required to ensure respect also by other states. Provision is also made for inquiry procedure, a Protecting	Implementing mechanisms are complex and, contrary to IHL include regional systems. Supervisory bodies, e.g. the UN Commission on Human Rights (UNCHR), are either based on the UN Charter or

Power mechanism, and the International Fact-Finding Commission. In addition, the International Committee of the Red Cross (ICRC) is given a key role in ensuring respect for the humanitarian rules.

provided for in specific treaties.

The UNCHR have developed a mechanism of special rapporteurs and working groups, whose task is to monitor and report on human rights situations either by country or by topic. Its role is to enhance the effectiveness of the UN human rights machinery and to build up national, regional and international capacity to promote and protect human rights and to disseminate human rights texts and information. Human rights also provide for the establishment of committees of independent experts charged with monitoring their implementation. Certain regional treaties (European and American) also establish human rights courts.

NOTE: IHL and International human rights law (hereafter referred to as human rights) are *complementary*. Both strive to protect the lives, health and dignity of individuals, albeit from a different angle.

CATEGORIES OF ARMED CONFLICT

Kinds/types of conflict as contemplated in R.A. 9851

1. *International Armed Conflict* – between two or more States including belligerent occupation.
2. *Non-International Armed Conflict* – between governmental authorities and organized armed groups or between such groups within a State.

NOTE: It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature (R.A. 9851).

3. *War of National Liberation* – an armed struggle waged by a people through its



liberation movement against the established government to reach self-determination.

It is also used to denote conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the U.N. Charter and the Declaration of Principles of International Law [*Protocol I, Art. 1(4)*].

INTERNATIONAL ARMED CONFLICTS

Armed conflict under IHL and R.A. 9851

1. "All cases of declared war or any other armed conflict which may arise between two or more of the Highest contracting parties, even if the State of war is not recognized by one of them" (*Geneva Convention of 1949, Art. 2*). It also applies to armed conflict between the government and a rebel or insurgent movement (*Geneva Convention of 1949, Art. 3*).
2. Under R.A. 9851, it is any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized groups or between such groups within a State *provided* that it gives rise or may give rise to a situation to which the Geneva Conventions of 12 August 1949 including their common Art. 3 apply.

Instances not covered by an armed conflict

It does not include internal disturbances or tensions such as:

1. Riots;
2. Isolated and sporadic acts of violence; and
3. Other acts of a similar nature.

Hors de combat

It refers to any person who:

1. Is in the power of an adverse party;
2. Has clearly expressed an intention to surrender; and
3. Has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself (*R.A. 9851*)

NOTE: In these cases the person abstains from any hostile act and does not attempt to escape. Under these circumstances, the said person shall not be made object of attack. Only combatants can be persons *hors de combat*.

Protected persons in an armed conflict

1. A person wounded, sick or shipwrecked, whether civilian or military;

2. A prisoner of war or any person deprived of liberty for reasons related to an armed conflict
3. A civilian or any person not taking a direct part or having ceased to take part in the hostilities in the power of the adverse party;
4. A person who, before the beginning of hostilities, was considered a stateless person or refugee under the relevant international instrument accepted by the parties to the conflict concerned or under the national legislation of the state of refuge or state of residence;
5. A member of the medical personnel assigned exclusively to medical purposes or to the administration of medical units or to the operation of an administration of medical transports; or
6. A member of the religious personnel who is exclusively engaged in the work of their ministry and attached to the armed forces of a party to the conflict, its medical units or medical transports or non-denominational, non-combatant military personnel carrying out functions similar to religious personnel.

NOTE: In such situations, the Geneva Conventions and Additional Protocol I, which calls for the protection of wounded and sick soldiers, medical personnel, facilities and equipment, wounded and sick civilian support personnel accompanying the armed forces, military chaplains and civilians who spontaneously take up arms to repel an invasion, apply.

INTERNAL OR NON-INTERNATIONAL ARMED CONFLICT

Inapplicability of IHL in internal disturbance

Internal disturbances and other situations of internal violence are governed by the provisions of human rights law and such measures of domestic legislation as may be invoked. IHL does not apply to situations of violence not amounting in intensity to an armed conflict.

Applicability of IHL in non-international armed conflicts

IHL is intended for the armed forces, whether regular or not, taking part in the conflict, and protects every individual or category of individuals not or no longer actively involved in the hostilities. *E.g.:* wounded or sick fighters; people deprived of their freedom as a result of the conflict; civilian population; medical and religious personnel.

Applicable rules in non-international armed conflict



1. Persons taking no active part in the hostilities, including armed forces who have laid down their arms and those placed *hors de combat* be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To these end, the following acts are and shall remain prohibited at any time and any place whatsoever with respect to the abovementioned persons:
 - a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - b. Taking of hostages;
 - c. Outrages against personal dignity, in particular humiliating and degrading treatment;
 - d. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
2. The wounded and sick shall be collected and cared for.

NOTE: An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict.

WAR OF NATIONAL LIBERATION

Wars of national liberation

Armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination [*Protocol I, Art. 1(4)*]. These are sometimes called insurgencies, rebellions or wars of independence.

Basis

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (*Protocol I* June 8 1977).

Categories of wars of national liberation

1. Colonial domination;
2. Alien occupation; and
3. Racist regimes when the peoples oppressed by these regimes are fighting for self-determination.

NOTE: The above listed enumeration is EXCLUSIVE.

Effect of the protocol

Armed conflicts that fall under the categories will now be regarded as international armed conflicts and thus fall under the International Humanitarian Law.

War

A contention between two States, through their armed forces, for the purpose of overpowering the other and imposing such conditions of peace as the victor pleases.

Instances when force is allowed

Under the UN Charter, the use of force is allowed only in two instances, to wit:

1. In the exercise of the *inherent right of self-defense*; and **(1998, 2002, 2009 Bar)**; and
2. In pursuance of the so-called *enforcement action that may be decreed by the Security Council*.

Steps in the Commencement of a war

1. Declaration of war;
2. Rejection of an ultimatum; and
3. Commission of an act of force regarded by at least one of the parties as an act of war.

Declaration of war

A communication by one State to another informing the latter that the condition of peace between them has come to an end and a condition of war has taken place.

Ultimatum

A written communication by one State to another which formulates, finally and categorically, the demands to be fulfilled if forcible measures are to be averted.

Effects of the outbreak of war

1. Laws of peace are superseded by the laws of war;
2. Diplomatic and consular relations between the belligerents are terminated;
3. Treaties of political nature are automatically cancelled, but those which are precisely intended to operate during war such as one regulating the conduct of hostilities, are activated; and
4. Enemy public property found in the territory of other belligerent at the outbreak of the



hostilities is with certain exceptions, subject to confiscation.

NOTE: An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations. Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them (*Laws and Customs of War on Land*, Hague II July 29, 1899, Art. 53).

Reprisal(1991 Bar)

A retaliatory action against an enemy in wartime. It is an otherwise illegal act done in response to a prior illegal act by an enemy, proportionate to the original wrong and designed to compel the enemy to desist from his illegal acts on the battlefield. Under such circumstances the law of armed conflicts recognizes the otherwise illegal acts as legal (*The Naulilaa Case, involving Portugal and Germany*).

Retorsion (1991, 2010 Bar)

It is an unfriendly act which may be taken by one state against another. It may be in response to an internationally wrongful conduct or an unfriendly act but which is nonetheless lawful.

Elements:

1. It is unfriendly;
2. It is lawful; and
3. It is remedial in character

Because the act is legitimate, no responsibility is engaged in international law, and the state taking the retorsion has a wide discretion as to what unfriendly actions it may implement, and to what extent (*Wallace-Bruce The Settlement of International Disputes: The Contribution of Australia and New Zealand* 1998).

Tests in determining the enemy character of individuals

1. *Nationality test* – If they are nationals of the other belligerent, wherever they may be;
2. *Domiciliary test* – If they are domiciled aliens in the territory of the other belligerent, on the

assumption that they contribute to its economic resources;

3. *Activities test* – If, being foreigners, they nevertheless participate in the hostilities in favor of the other belligerent;
4. *Territorial or Commercial Domicile Test* – In matters referring to economic warfare; and
5. *Controlling Interest Test* – This test is applied to corporation in addition to the place of incorporation test. A corporation is considered as enemy if it:
 - a. is incorporated in an enemy territory; and
 - b. is controlled by individuals bearing enemy character.

Principle of Distinction

Parties to an armed conflict must at all times distinguish between civilian and military targets and that all military operations should only be directed at military targets.

Participants in war

1. *Combatants* – Those who engage directly in the hostilities, and
2. *Non-combatants* – Those who do not, such as women and children.

Combatants

Those individuals who are legally entitled to take part in hostilities. These include:

1. *Regular Forces (RF)* – Members of the armed forces except those not actively engaged in combat. These are the army, navy, and air force. Non-combatant members of the armed forces include: chaplains, army services and medical personnel
2. *Irregular Forces (IF)* – Also known as franc-tireurs consist of militia and voluntary corps. These are members of organized resistance groups, such as the guerrillas. They are treated as lawful combatants provided that they are:
 - a. Being commanded by a person responsible for his subordinates;
 - b. Wearing a fixed distinctive sign or some type of uniform;
 - c. Carrying arms openly; and
 - d. Obeying the laws and customs of war.
3. *Non-privileged Combatants (NPC)* – individuals who take up arms or commit hostile acts against the enemy without belonging to the armed forces or forming part of the irregular forces. If captured, they are not entitled to the status of prisoners of war.
4. Citizens who rise in a “*levee en masse*” – The inhabitants of unoccupied territory who, on approach of the enemy, spontaneously take arms



to resist the invading troops without having time to organize themselves, provided only that they:

- a. Carry arms openly; and
 - b. Observe the laws and customs of war.
5. The officers and crew members of merchant vessels who forcibly resist attack.

Civilian

Any person who does not belong to the armed forces and who is not a combatant.

NOTE: In case of doubt whether a person is a civilian or not, that person shall be considered as a civilian.

Suspension of arms

A temporary cessation of hostilities by agreement of the local commanders for such purposes as the gathering of the wounded and the burial of the dead.

Armistice

The suspension of hostilities within a certain area or in the entire region of the war, agreed upon by the belligerents, usually for the purpose of arranging the terms of the peace.

Armistice vs. Suspension of arms

BASIS	ARMISTICE	SUSPENSION OF ARMS
<i>As to purpose</i>	Political	Military
<i>As to form</i>	Usually in writing.	May be oral.
<i>As to who may conclude</i>	Only by the commanders-in-chief of the belligerent governments.	May be concluded by the local commanders.

Ceasefire

An unconditional stoppage of all hostilities usually ordered by an international body like the United Nations Security Council for the purpose of settling the differences between the belligerents.

Truce

A conditional ceasefire for political purposes.

Capitulation

The surrender of military forces, places or districts, in accordance with the rules of military honor.

Basic principles that underlie the rules of warfare

1. *The Principle of Military Necessity* – The belligerent may employ any amount of force to compel the complete submission of the enemy with the least possible loss of lives, time and money.

NOTE: Under R.A. 9851, it is the necessity of employing measures which is indispensable to achieve a legitimate aim of the conflict and not prohibited by IHL.

2. *The Principle of Humanity* – Prohibits the use of any measure that is not absolutely necessary for the purpose of the war, such as the poisoning of wells, destruction of works of art and property devoted to religious or humanitarian purposes.
3. *The Principle of Chivalry* – Prohibits the belligerents from the employment of treacherous methods in the conduct of hostilities, such as the illegal use of Red Cross emblems.
4. *The Principle of Proportionality* – The legal use of force whereby belligerents must make sure that harm caused to civilians or civilian property is not excessive in relation to the concrete and direct military advantage from an anticipated attack or by an attack on military objective.

War may be terminated by

1. Simple cessation of hostilities, without the conclusion of a formal treaty;
2. Treaty of peace;
3. Unilateral declaration; and
4. The complete submission and subjugation of one of the belligerents, followed by a dictated treaty of peace or annexation of conquered territory

Postliminium

It imports the reinstatement of the old laws and sovereignty of territory which has been under belligerent occupation once control of the belligerent occupant is lost over the territory affected.

Application of the Principle of Postliminium (1979 Bar)



Where the territory of one belligerent State is occupied by the enemy during war, the legitimate government is ousted from authority. When the belligerent occupation ceases to be effective, the authority of the legitimate government is automatically restored, together with all its laws, by virtue of the *jus postliminium*.

Principle of *Uti Possidetis*

Allows retention of property or territory in the belligerent's actual possession at the time of the cessation of hostilities.

Jus ad bellum (Law on the use of force)

It seeks to limit resort to force between States. States must refrain from the threat or use of force against the territorial integrity or political independence of another state (*UN Charter, Art. 2, par. 4*).

XPNS:

1. Self-defense; or
2. Following a decision adopted by the UN Security Council under Chapter VII of the UN Charter.

Status Quo Ante Bellum

Each of the belligerents is entitled to the territory and property which it had possession of at the commencement of the war.

REPUBLIC ACT 9851 (PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY)

Effect/relevance of the passage of R.A. 9851

R.A. 9851 mandates both the State and non-state armed groups to observe international humanitarian law standards and gives the victims of war-crimes, genocide and crimes against humanity legal recourse.

State Policies under R.A. 9851

1. The renunciation of war and adherence to a policy of peace, equality, justice, freedom, cooperation and amity with all nations;
2. Values the dignity of every human person and guarantees full respect of human rights;
3. Promotion of Children as zones of peace
4. Adoption of the generally accepted principles of international law;
5. Punishment of the most serious crimes of concern to the international community; and

6. To ensure persons accused of committing grave crimes under international law all rights for a fair and strict trial in accordance with national and international law as well as accessible and gender-sensitive avenues of redress for victims of armed conflicts.

NOTE: The application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

Genocide

1. Any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group such as:
 - a. Killing of members of the group;
 - b. Causing serious bodily or mental harm to members of the group;
 - c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d. Imposing measure intended to prevent births within the group; and
 - e. Forcibly transferring children of the group to another group.
2. Directly and publicly inciting others to commit genocide (*R.A. 9851*)

NOTE: Genocide may be committed either during war or armed conflict or in times of peace.

War crimes

1. In case of an *international armed conflict*, grave breaches of the Geneva Conventions of August 12, 1949, namely any of the following acts against persons or property protected:
 - a. Willful killing;
 - b. Torture or inhuman treatment, including biological experiments;
 - c. Willfully causing great suffering, or serious injury to body or health;
 - d. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
 - e. Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - f. Arbitrary deportation or forcible transfer of population or unlawful confinement;
 - g. Taking hostages;
 - h. Compelling a prisoner of war or other protected person to serve in the forces of a hostile power; and
 - i. Unjustifiable delay in the repatriation of prisoners of war or other protected persons.



2. In case of *non-international armed conflict*, serious violation of common Art. 3 to the four Geneva Conventions of August 12 1949, namely any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
 - a. Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
 - b. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - c. Taking of hostages; and
 - d. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
3. Other serious violations of the laws and customs applicable in the armed conflict within the established framework of international law, namely:
 - a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - b. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - c. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of Additional Protocol II in conformity with international law;
 - d. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - e. Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;
 - f. Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health;
 - g. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;
 - h. Killing or wounding a person in the knowledge that he/she is *hors de combat*, including a combatant who, having laid down his/her arms no longer having means of defense, has surrendered at discretion;
 - i. Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under the International Humanitarian Law, resulting in death, serious personal injury or capture;
 - j. Intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided that they are not military objectives.
 - k. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;
 - l. Killing wounding or capturing an adversary by resort to perfidy

NOTE: *Perfidy* – A combatant's conduct that creates the impression that an adversary is entitled to, or is obliged to accord protection under international law when in fact the conduct is used to gain an advantage (*Black's Law Dictionary*).

- m. Declaring that no quarter will be given;
- n. Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;
- o. Pillaging a town or place, even when taken by assault;
- p. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians

- involved or imperative military reasons so demand;
- q. Transferring, directly or indirectly, by occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- r. Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- s. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence;
- t. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- u. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impending relief supplies;
- v. In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- w. In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- x. Committing any of the following acts:
 - i. Conscripting, enlisting or recruiting children under the age of 15 years into the national armed forces;
 - ii. Conscripting, enlisting, or recruiting children under the age of 18 years into an armed force or group other than the national armed forces; and
 - iii. Using children under the age of 18 years to participate actively in hostilities;
- y. Employing means of warfare which are prohibited under international law, such as:
 - i. Poison or poisoned weapons;
 - ii. Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - iii. Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and
 - iv. Weapons, projectiles and material and methods of warfare which are of the

nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict (RA 9851).

“Other crimes against humanity” aside from war crimes and genocide under RA 9851

Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1. Willful killing;
2. Extermination;
3. Enslavement;
4. Arbitrary deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;
8. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation other grounds that are universally recognized as impermissible under international law;
9. Enforced or involuntary disappearance of persons;
10. Apartheid; and
11. Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (RA 9851).

CORE INTERNATIONAL OBLIGATIONS OF STATES UNDER THE IHL

1. The protection of persons who are not, or are no longer, participating in hostilities;
2. Soldiers who surrender or who are *hors de combat* are entitled to respect for their lives and their moral and physical integrity. It is forbidden to kill or injure them;
3. The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and equipment. The emblem of the red cross, red crescent or red crystal is the sign of such protection and must be respected;



4. Captured combatants are entitled to respect for their lives, dignity, personal rights and convictions. They must be protected against all acts of violence and reprisals. They must have the right to correspond with their families and to receive relief;
5. Civilians under the authority of a party to the conflict or an occupying power of which they are not nationals are entitled to respect for their lives, dignity, personal rights and convictions;
6. Everyone must be entitled to benefit from fundamental judicial guarantees. No one must be sentenced without previous judgment pronounced by a regularly constituted court;
7. No one must be held responsible for an act he has not committed. No one must be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment;
8. The right of parties to an armed conflict to choose methods and means of warfare is not unlimited;
9. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering; and
10. Parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Adequate precautions shall be taken in this regard before launching an attack.

PRINCIPLES OF IHL

TREATMENT OF CIVILIANS

Principle of Humanity or *Martens* clause

In cases not covered by other international agreements, civilians and combatants remain under the protection and authority of the principles of International Law derived from established custom, from the Principles of Humanity and from the dictates of public conscience.

The extensive codification of IHL and the extent of the accession to the resultant treaties, as well as the fact that the denunciation clauses that existed in the codification instruments have never been used, have provided the international community with a corpus of treaty rules the great majority of which had already become customary and which reflected the most universally recognized humanitarian principles. These rules indicate the normal conduct and behavior expected of States.

PRISONERS OF WAR

Prisoners of War

Those lawful combatants who have fallen into the power of the enemy.

Rights and privileges of prisoners of war

1. To be treated humanely;
2. Not to be subject to torture;
3. To be allowed to communicate with their families;
4. To receive food, clothing, religious articles, and medicine;
5. To bare minimum of information;
6. To keep personal belongings;
7. To proper burial;
8. To be grouped according to nationality;
9. To the establishment of an informed bureau; and
10. To repatriation for sick and wounded (*1949 Geneva Convention*)

Members of Militias or Volunteer Groups as Prisoners-Of-War

Members of militias or volunteer groups are entitled to prisoner-of-war status when captured by the enemy, provided that:

1. They form part of such armed forces of the state; or
2. They fulfill the following conditions:
 - a. They are being commanded by a person responsible as superior;
 - b. They have a fixed distinctive sign recognizable at a distance;
 - c. They carry arms openly; and
 - d. They conduct their operations in accordance with the laws and customs of war.

Captured guerilla as prisoners of war

A captured guerilla or other members of organized resistance movements may demand treatment afforded to a prisoner of war under the 1949 Geneva Convention, provided that:

1. They are being commanded by a person responsible as superior;
2. They have a fixed distinctive sign recognizable at a distance;
3. They carry arms openly; and
4. They conduct their operations in accordance with the laws and customs of war.

NOTE: Persons such as civilian members of military aircraft crews, and war correspondents, shall be so entitled to prisoner-of-war status when they fall under the hands of the enemy.

Status of Journalists who are engaged in dangerous professional missions in areas Of armed conflicts



They shall be treated as civilians, provided that they take no action adversely affecting their status as civilians, and their prisoners-of-war status to the armed forces when they fall to the enemy hands.

Treatment of spies when captured

As spy is a soldier employing false pretenses or acts through clandestine means to gather information from the enemy.

When captured, may be proceeded against under the municipal law of the other belligerent, although under the Hague Convention, may not be executed without trial. But if captured after he has succeeded in rejoining his army, must be treated as a prisoner of war (*Nachura Political Law Outline, 2014*).

A soldier not wearing uniform during hostilities runs the risk of being treated as a spy and not entitled to prisoner of war status. When caught, they are not to be regarded as prisoners of war.

NOTE: Military scouts are not spies.

Spies are not entitled to prisoner-of-war status when captured by the enemy. Any member of the armed forces of a party to the conflict who falls into the power of an adverse party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy.

However, the following acts of gathering or attempting to gather information shall **not** be considered as acts of espionage:

1. When made by a member of the armed forces who is in uniform; and
2. When made by a member of the armed forces who is a resident of the territory occupied by an adverse party who does so but not through an act of false pretenses or in a deliberately clandestine manner.

LAW OF NEUTRALITY

Neutrality

It is non-participation, directly or indirectly, in a war between contending belligerents. This exists only during war time and is governed by the law of nations.

e.g.: Switzerland, Sweden, The Vatican City, and Costa Rica.

Non-alignment (Neutralism)

This refers to peacetime foreign policies of nations desiring to remain detached from conflicting interests of other nations or power groups.

Neutralist policy

It is the policy of the state to remain neutral in future wars.

Neutrality vs. Non-alignment

BASIS	NEUTRALITY	NON-ALIGNMENT
<i>As to applicability</i>	Presupposes the existence of war or conflict.	Exists during peace time.
<i>Purpose</i>	Avoids involvement in a war.	Rejects imperialism and colonialism by the world powers.
<i>As to nature</i>	Pre-determined position.	Evaluates the world political events based on case-to-case merits.

A State considered as a neutralized state

When its independence and integrity are guaranteed by an international convention on the condition that such State obligates itself to never take up arms against any other State, except for self-defense, or enter into such international obligations as would indirectly involve a war.

Rights and Duties of a Neutral State

1. *Duty of abstention* – Abstain from taking part in the hostilities and from giving assistance to either belligerent;
2. *Duty of prevention* – Prevent its territory and other resources from being used in the conduct of hostilities;
3. *Duty of acquiescence* – Acquiesce in certain restrictions and limitations the belligerents may find necessary to impose; and
4. *Right of diplomatic communication* – To continue diplomatic relations with other neutral states and with the belligerents.

Obligations of belligerents

1. Respect the status of the neutral State; and
2. Avoid any act that will directly or indirectly involve it in their conflict and to submit to any lawful measure it may take to maintain or protect its neutrality.

Some restraints on neutral states



1. Blockade;
2. Contraband of war; and
3. Free ships make free goods.

Blockade

It is a hostile operation by means of which vessels and aircraft of one belligerent prevent all other vessels, including those of neutral States, from entering or leaving the ports or coasts of the other belligerent, the purpose being to shut off the place from international commerce and communications with other States.

Elements of a valid blockade

1. Binding and duly communicated to neutral states;
2. Effective and maintained by adequate sources;
3. Established by a competent authority of belligerent government;
4. Limited only to the territory of the enemy; and
5. Impartially applied to all states.

Contraband

It refers to goods which, although neutral property, may be seized by a belligerent because they are useful for war and are bound for a hostile destination.

Kinds of contraband

1. *Absolute* – those which are useful for war under all circumstances (*e.g. guns and ammunitions*);
2. *Conditional* – those which have both civilian and military utility (*e.g. food and clothing*); or
3. Under the *free list* – those which are exempt from the law on contraband for humanitarian reasons (*example: medicines*)

Doctrine of Continuous Voyage or Continuous Transport

Goods immediately reloaded at an intermediate port on the same vessel, or reloaded on another vessel or other forms of transportation may also be seized on the basis of doctrine of ultimate consumption.

Doctrine of Ultimate Consumption

Goods intended for civilian use which may ultimately find their way to and be consumed by belligerent forces may be seized on the way.

Doctrine of Infection

Innocent goods shipped with contraband may also be seized.

Doctrine of Ultimate Destination

The liability of the contraband from being captured is determined not by their ostensible but by their real destination.

Doctrine of Free Ships Make Free Goods

A ship's nationality determines the status of its cargo. Thus, enemy goods on a neutral ship, excepting contraband, would not be subject to capture on the high seas.

Visit and Search

Belligerent warships and aircraft have the right to visit and search neutral merchant vessels on the high seas to determine whether they are in any way connected with the hostilities.

Unneutral service

It consists of acts, of a more hostile character than carriage of contraband or breach of blockade, which are undertaken by merchant vessels of a neutral State in aid of any of the belligerents.

Right of Angary

The right of a belligerent state to seize, use or destroy, in case of urgent necessity for purposes of offenses or defense, neutral property found in enemy territory, or on the high seas, upon payment of just compensation.

Requisites for the Exercise of Right of Angary

1. That the property is in the territory under the control or jurisdiction of the belligerent;
2. That there is urgent necessity for the taking; and
3. That just compensation is paid to the owner.

Termination of Neutrality

Neutrality is terminated when the neutral State itself joins the war or upon the conclusion of peace.

LAW OF THE SEA

International Law of the Sea (ILS)

A body of treaty rules amid customary norms governing the uses of the sea, the exploitation of its resources, and the exercise of jurisdiction over maritime regimes. It is a branch of public international law, regulating the relations of states with respect to the uses of the oceans (*Arigo v. Swift, G.R. No. 206510, September 16, 2014*).

United Nations Convention on the Law of the Sea (UNCLOS)



A treaty that defines the rights and obligations of nations in their use of the world's oceans, establishing rules for business, the environment, and the management of marine natural resources.

The UNCLOS is a multilateral treaty which was opened for signature on December 10, 1982 at Montego Bay, Jamaica. It was ratified by the Philippines in 1984 but came into force on November 16, 1994 upon the submission of the 60th ratification. The UNCLOS gives to the coastal State sovereign rights in varying degrees over the different zones of the sea which are: 1) internal waters, 2) territorial sea, 3) contiguous zone, 4) exclusive economic zone, and 5) the high seas. It also gives coastal States more or less jurisdiction over foreign vessels depending on where the vessel is located. Insofar as the internal waters and territorial sea is concerned, the Coastal State exercises sovereignty, subject to the UNCLOS and other rules of international law. Such sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil (*Arigo v. Swift, ibid.*).

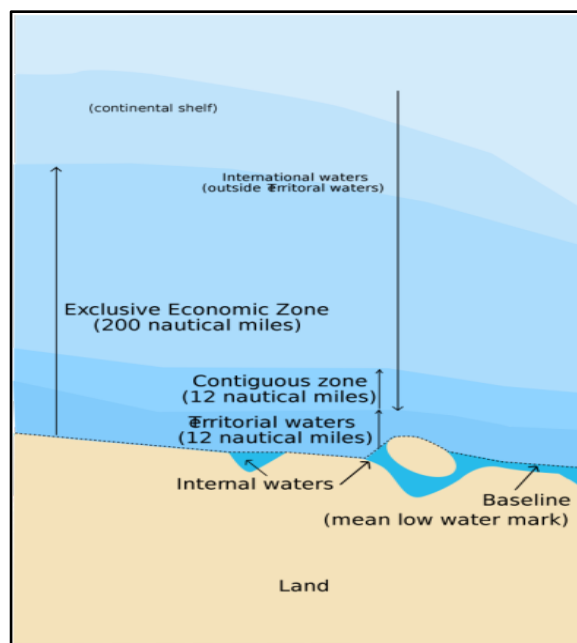
Mare Liberum Principle or Free Sea or Freedom of the Sea

It means international waters are free to all nations and belongs to none of them.

BASELINES

Baseline

It is a line from which the breadth of the territorial sea, the contiguous zone and the exclusive economic zone is measured in order to determine the maritime boundary of the coastal State.



Normal Baseline

It is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state (UNCLOS, Art. 5).

Formation of Baseline

1. *Mouths of Rivers* – If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks (UNCLOS, Art. 9); or
2. *Bays* – Where the distance between the low-water marks of the natural entrance points:
 - a. *Does not exceed 24 nautical miles* – a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters [UNCLOS, Art. 10 (4)]; and
 - b. *Exceeds 24 nautical miles* – a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length [UNCLOS, Art. 10 (5)]

NOTE: This relates only to bays the coasts of which belong to a single State and does not apply to “historic” bays [UNCLOS, Art. 10 (1)].

Bay

It is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more



than a mere curvature of the coast [UNCLOS, Art. 10 (2)].

NOTE: The indentation shall not be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation (*Ibid*).

ARCHIPELAGIC STATES

Archipelago

It means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such (UNCLOS, Art. 46).

Archipelagic State

A state constituted wholly by one or more archipelagos and may include other islands (UNCLOS, Art. 46).

Archipelagic Doctrine (2016 Bar)

Art. I, Sec. 1 of the 1987 Constitution adopts the archipelagic doctrine. It provides that the national territory of the Philippines includes the Philippine archipelago, with all the islands and waters embraced therein; and the waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions form part of the internal waters of the Philippines.

It emphasizes the unity of land and waters by defining an archipelago either as a group of islands surrounded by waters or a body of water studded with islands.

STRAIGHT ARCHIPELAGIC BASELINES

Straight Archipelagic Baselines *vis-à-vis* Archipelagic State (2016 Bar)

An archipelagic State may draw straight archipelagic baselines by joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1 (UNCLOS, Art. 47).

Guidelines in drawing archipelagic baselines

1. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a

maximum length of 125 nautical miles [UNCLOS, Art. 47 (2)].

2. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago [UNCLOS, Art. 47(3)].
3. Such baselines shall not be drawn to and from low tide elevations [UNCLOS, Art. 47(4)].

NOTE: Unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at distances not exceeding the breadth of the territorial sea from the nearest island (*Ibid*).

4. It shall not be applied in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State [UNCLOS, Art. 47(5)]
5. If a part of the archipelagic water of an archipelagic State lies between two parts of an immediately adjacent neighboring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected [UNCLOS, Art. 47(6)].

NOTE: The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf are measured from the archipelagic baselines drawn in accordance with Art. 47 (UNCLOS, Art. 48).

Sovereignty of the archipelagic states

It extends to the waters enclosed by the archipelagic baselines (archipelagic waters), regardless of their depth or distance from the coast, to the air space over the archipelagic waters, as well as to their bed and subsoil and the resources contained therein.

The sovereignty extends to the archipelagic waters but is subject to the right of innocent passage which is the same nature as the right of innocent passage in the territorial sea [UNCLOS, Art. 49(1) in relation to Art. 52(1)].

NOTE: The regime of archipelagic sea lanes passage shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil and the resources contained therein [UNCLOS, Art. 49(4)].



ARCHIPELAGIC WATERS

Archipelagic waters

These are waters enclosed by the archipelagic baselines, regardless of their depth or distance from the coast [UNCLOS, Art. 49(1)].

Rights by which archipelagic waters are subject to:

1. Rights under existing agreement on the part of the third states should be respected [UNCLOS, Art. 51(1)];
2. The traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States (*Ibid*); and
3. Existing submarine cables laid by other States and "passing through its waters without making a windfall" as well as the maintenance and replacement of such cables upon being notified of their location and the intention to repair or replace them [UNCLOS, Art. 51(2)].

Applicability of the right of Innocent passage in archipelagic waters

GR: As a rule, ships of all States enjoy the right of innocent passage through archipelagic waters [UNCLOS, Art. 52(1)].

XPN: Right of Innocent Passage may be suspended in some areas of its archipelagic waters. But such suspension must be:

1. Without discrimination in form or in fact among foreign ships;
2. Essential for the protection of its security; and
3. Shall take effect only after having been duly published [UNCLOS, Art. 52(2)].

Q: Does R.A. 9522 (Philippine Archipelagic Baseline Law) converting internal waters into archipelagic waters, violate the Constitution in subjecting these waters to the right of innocent and sea lanes passage including overflight? (2004, 2015 Bar)

A: NO. Whether referred to as Philippine "internal waters" under Art. I of the Constitution or as "archipelagic waters" under UNCLOS III [Art. 49 (1)], the Philippines exercises sovereignty over the body of water lying landward of the baselines, including the air space over it and the submarine areas underneath.

The fact of sovereignty, however, does not preclude the operation of municipal and international law norms subjecting the territorial sea or archipelagic waters to necessary, if not marginal, burdens in the interest of maintaining unimpeded, expeditious

international navigation, consistent with the international law principle of freedom of navigation.

Thus, domestically, the political branches of the Philippine government, in the competent discharge of their constitutional powers, may pass legislation designating routes within the archipelagic waters to regulate innocent and sea lanes passage (*Magallona v. Ermita*, G.R. No. 187167, August 16, 2011).

NOTE: In the absence of municipal legislation, international law norms, now codified in UNCLOS III, operate to grant innocent passage rights over the territorial sea or archipelagic waters, subject to the treaty's limitations and conditions for their exercise. Significantly, the right of innocent passage is a customary international law, thus automatically incorporated in the corpus of Philippine law. No modern State can validly invoke its sovereignty to absolutely forbid innocent passage that is exercised in accordance with customary international law without risking retaliatory measures from the international community.

The imposition of these passage rights through archipelagic waters under UNCLOS III was a concession by archipelagic States, in exchange for their right to claim all the waters landward of their baselines, regardless of their depth or distance from the coast, as archipelagic waters subject to their territorial sovereignty. More importantly, the recognition of archipelagic States' archipelago and the waters enclosed by their baselines as one cohesive entity prevents the treatment of their islands as separate islands under UNCLOS III. Separate islands generate their own maritime zones, placing the waters between islands separated by more than 24 nautical miles beyond the States' territorial sovereignty, subjecting these waters to the rights of other States under UNCLOS III (*Magallona v. Ermita*, *ibid.*).

ARCHIPELAGIC SEA LANES PASSAGE

Right of archipelagic sea lanes passage

It is the right of foreign ships and aircraft to have continuous, expeditious and unobstructed passage in sea lanes and air routes through or over the archipelagic waters and the adjacent territorial sea of the archipelagic state, "in transit between one part of the high seas or an exclusive economic zone." All ships and aircraft are entitled to the right of archipelagic sea lanes passage [UNCLOS, Art. 53(1) in relation with Art. 53(3)].

All ships are entitled to the right of archipelagic sea lanes passage. Submarines are not required to surface in the course of its passage unlike the



exercise of right of innocent passage in the territorial sea [UNCLOS, Art. 20 in relation to Art. 53(3)].

The right is the same as Transit Passage. Both define the rights of navigation and overflight in the normal mode solely for the purpose of "continuous, expeditious and unobstructed transit." In both cases, the archipelagic state cannot suspend passage (UNCLOS, Arts. 44 and 54).

NOTE: The right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation [UNCLOS, Art. 53(12)].

Sea Lanes and Air Routes

It shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary (UNCLOS, Art. 53[4]).

Designation or substitution of sea lanes

The archipelagic State shall refer proposals to the competent international organization (International Maritime Organization). The IMO may adopt only such sea lanes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them [UNCLOS, Art. 53(9)].

REGIME OF ISLANDS

Regime of Islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide;
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone and the continental shelf of an island are determined in accordance with the provisions of the Convention applicable to other land territory; and
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. (UNCLOS, Art. 121)

NOTE: Islands can be very important because of the possibility of exploiting oil and gas resources around them. This explains the controversy over Spratleys. It is noteworthy that islands can have their own territorial sea, exclusive economic zone and continental shelf. However, rocks "which cannot sustain human habitation or economic life" only

have a territorial sea. But there is no clear international law definition of "economic life" referred to in n. 3. (Bernas, *Introduction to Public International Law 2009*, p. 129)

Artificial islands or installations are not "islands" in the sense of Art. 121 of the UNCLOS. However, coastal states may establish safety zones around artificial islands and prescribe safety measures around them. [ibid, citing UNCLOS, Art. 60(4) and (5)]

Regime of Islands under Philippine Laws

The baseline in the following areas over which the Philippines likewise exercises sovereignty and jurisdiction shall be determined as "Regime of Islands" under the Republic of the Philippines consistent with Art. 121 of the United Nations Convention on the Law of the Sea (UNCLOS):

- a) The Kalayaan Island Group as constituted under Presidential Decree No. 1596; and
- b) Bajo de Masinloc, also known as Scarborough Shoal. (R.A. No. 9522, Sect. 2)

INTERNAL WATERS

Internal waters

These are waters of lakes, rivers and bays landward of the baseline of the territorial sea. Waters on the landward side of the baseline of the territorial sea also form part of the internal waters of the coastal state. However, in the case of archipelagic states, waters landward of the baseline other than those of rivers, bays, and lakes, are archipelagic waters [UNCLOS, Art. 8 (1)].

Delimitation of internal waters

Within the archipelagic waters, the archipelagic state may draw closing lines for the delimitation of internal waters (UNCLOS, Art. 50 in relation with Arts. 9, 10, 11).

NOTE: A coastal state has sovereignty over its internal waters as if internal waters were part of its land territory (UNCLOS, Art. 50).

Right of Innocent Passage (1991 Bar)

It means navigation through the territorial sea of a State for the purpose of traversing the sea without entering internal waters, or of proceeding to internal waters, or making for the high seas from internal waters, as long as it is not prejudicial to the peace, good order or security of the coastal State [UNCLOS, Arts. 18 (1)(2), 19(1)].



Applicability of the right of innocent passage in internal waters

GR: There is no Right of Innocent Passage through the internal water because it only applies to territorial sea and the archipelagic waters.

XPN: A coastal state may extend its internal waters by applying the straight baseline method in such a way as to enclose as its internal waters areas which are previously part of the territorial sea. It also applies to straits used for international navigation converted into internal waters by applying the straight baselines method. Thus, the right of innocent passage continues to exist in the "extended" internal waters [UNCLOS, Art. 8(2)].

TERRITORIAL SEA

Breadth of The Territorial Sea (2004, 2015 Bar)

Every State has the right to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines (UNCLOS, Art. 3).

Outer Limit of The Territorial Sea

It is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea (UNCLOS, Art. 4).

Territorial sea vs. Internal waters of the Philippines

TERRITORIAL SEA	INTERNAL WATERS
defined by historic right or treaty limits.	defined by the archipelago doctrine.
as defined in the Convention on the Law of the Sea, has a uniform breadth of 12 miles measured from the lower water mark of the coast.	outermost points of our archipelago which are connected with baselines and all waters comprised therein.

Methods used in defining territorial sea

1. *Normal baseline method* – The territorial sea is simply drawn from the low-water mark of the coast, to the breadth claimed, following its sinuousness and curvatures but excluding the

internal waters in the bays and gulfs (UNCLOS, Art. 5); and

2. *Straight baseline method* – Where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measure (UNCLOS, Art. 7).

NOTE: The Philippines uses this method in drawing baselines.

Sovereignty over the territorial sea (2015 Bar)

Coastal states exercise sovereignty over Territorial sea and it extends to the airspace over the territorial sea and to its seabed and subsoil.

NOTE: The sovereignty over the territorial sea is subject to the right of innocent passage on the part of ships of all states (Magallona, 2005).

Applicability of the right of innocent passage in the internal waters and territorial sea

In the territorial sea, a foreign State can claim for its ships the right of *innocent passage*, whereas in the internal waters of a State no such right exists.

However, in *Saudi Arabia v. Aramco* (Arbitration 1963), the arbitrator said that according to international law — ports of every state must be open to foreign vessels and can only be closed when vital interests of the state so requires. But according to the *Nicaragua v. US* case, a coastal state may regulate access to its ports.

Instances when the right of innocent passage is considered prejudicial

Right of innocent passage is considered prejudicial if the foreign ship engages in the following activities:

1. Any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
2. Any exercise or practice with weapons of any kind;
3. Any act aimed at collecting information to the prejudice of the defense or security of the coastal State;
4. Any act aimed at collecting information to the prejudice of the defense or security of the coastal State;
5. Any act of propaganda aimed at affecting the defense or security of the coastal State;



6. The launching, landing or taking on board of any aircraft;
7. The launching, landing or taking on board of any military device;
8. The loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
9. Any act of willful and serious pollution contrary to the Convention;
10. Any fishing activities;
11. The carrying out of research or survey activities;
12. Any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State; or
13. Any other activity not having a direct bearing on passage (*UNCLOS, Art. 19 [2]*).

Laws and regulations of the coastal State relating to innocent passage

The coastal state may adopt laws and regulations in respect of all or any of the following:

1. Safety of navigation and the regulation of maritime traffic;
2. Protection of navigational aids and facilities and other facilities or installations;
3. Protection of cables and pipelines;
4. Conservation of the living resources of the sea;
5. Prevention of infringement of the fisheries laws and regulations of the coastal State;
6. Preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
7. Marine Scientific research and hydrographic surveys; or
8. Prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State [*UNCLOS, Art. 21(1)*].

NOTE: It shall not however, apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards [*UNCLOS, Art. 21(2)*].

Rules when traversing the territorial sea through the right of innocent passage

1. *Submarines and other underwater vehicles* – They are required to navigate on the surface and to show their flag (*UNCLOS, Art. 20*);
2. *Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances* – They must carry documents and observe special precautionary measures established for such ships by international agreements. They may be required to confine their passage on sea lanes

prescribed by the coastal State (*UNCLOS, Art. 23*);

3. Warships –

- a. Coastal State may require that it leave the territorial sea immediately when it does not comply with the laws and regulations of the coastal State and disregards compliance (*UNCLOS, Art. 30*);
- b. Flag State shall bear international responsibility for any loss or damage to the coastal State resulting from non-compliance with the laws and regulations of the coastal State concerning passage (*UNCLOS, Art. 31*); and
- c. Submarines in innocent passage are required to navigate on the surface and to show their flag (*UNCLOS, Art. 20*).

NOTE: This will not affect the immunities of warships and other government ships operated for non-commercial purpose (*UNCLOS, Art. 32*).

Warship

It is a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline (*UNCLOS, Art. 29*).

NOTE: The right of innocent passage pertains to all ships, including warships.

Duties of the coastal State with regard to innocent passage of foreign ships

The coastal State shall:

1. Not hamper the innocent passage of the foreign ships through its territorial sea;
2. Not impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage;
3. Not discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State; and
4. Give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea (*UNCLOS, Art. 24*).

Rights of the coastal state relating to innocent passage through the territorial sea:

The coastal State may:

1. Take the necessary steps in its territorial sea to prevent passage which is not innocent [*UNCLOS, Art. 25(1)*];
2. Take the necessary steps to prevent any breach of the conditions to which admission of ships to



internal waters or such a call is subject [UNCLOS, Art. 25(2)];

3. Without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapon exercises [UNCLOS, Art. 25(3)].

NOTE: No charge may be levied upon foreign ships by reason only of their passage through the territorial sea [UNCLOS, Art. 26(1)].

Charges may be levied only as payment for specific services rendered to the ship which shall be levied without discrimination [UNCLOS, Art. 26(2)].

Right of the coastal state to suspend innocent passage in specified areas

The coastal state may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published [UNCLOS, Art. 25(3), Part II Territorial Sea and Contiguous Zone].

Exercise of criminal jurisdiction of the coastal state

GR: Criminal jurisdiction of the coastal state should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage.

XPNS:

1. Consequence of the crime extend to the coastal state;
2. Crime is of a kind to disturb the peace of the country or the good order of the territorial sea
3. Assistance of local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
4. Measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances [UNCLOS, Art. 27(1)].

NOTE: Such does not affect the right of the coastal state to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters [UNCLOS, Art. 27(2)].

Exercise of civil jurisdiction over foreign ships passing through the territorial sea of the coastal state

The coastal state may exercise civil jurisdiction, subject to the following exceptions:

1. It should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship [UNCLOS, Art. 28(1)]
2. It may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State [UNCLOS, Art. 28(2)].

NOTE: It is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters [UNCLOS, Art. 28(3)].

CONTIGUOUS ZONE (2004, 2015 Bar)

It is the zone adjacent to the territorial sea, which the coastal State may exercise such control as is necessary to:

1. Prevent infringement of its customs, fiscal, immigration, or sanitary laws within its territory or its territorial sea; or
2. Punish such infringement.

The contiguous zone may not extend more than 24 nautical miles beyond the baseline from which the breadth of the territorial sea is measured 12 nautical miles from the territorial sea [UNCLOS, Art. 33].

NOTE: The coastal state does not have sovereignty over the contiguous zone because the contiguous zone is a zone of jurisdiction for a particular purpose, not of sovereignty.

Contiguous zone does not automatically belong to the territory of the coastal state

The coastal state must make a claim to its Contiguous Zone for pertinent rights to exist. Art. 33 of the UNCLOS speaks in permissive terms, *i.e.*, "the coastal state may exercise the control necessary" for definite purposes (Magallona, 2005).

Extent of the Contiguous Zone



The coastal State may not extend its Contiguous Zone beyond the 24 nautical miles from the baseline (from which the breadth of the territorial sea is measured) [UNCLOS, Art. 33 (2)]

Right of transit passage

It is the right to exercise freedom of navigation and overflight solely for the purpose of continuous and expeditious transit through the straits used for international navigation, *i.e.*, between two areas of the high seas or between two exclusive economic zones.

The requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State [UNCLOS, Art. 38(2)].

NOTE: The right of transit passage is not applicable if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics [UNCLOS, Art. 38(1)].

Vessels entitled to right of transit passage

All ships and aircraft enjoy the right of transit passage.

Right of innocent passage vs. Transit passage

BASIS	INNOCENT PASSAGE	TRANSIT PASSAGE
<i>As to scope</i>	Pertains only to navigation of ships.	Includes right of overflight.
<i>As to submarines</i>	Requires submarine and other underwater vehicles to navigate on the surface and to show their flag.	No requirement specially applicable to submarines.
<i>As to suspension</i>	Can be suspended.	Cannot be suspended.
<i>As to designation of sea lanes</i>	In the designation of sea lanes and traffic separation schemes, the coastal State shall only take into account the recommendations	Designation of sea lanes and traffic separation schemes is subject to a proposal and agreement between States bordering the

	of a competent international organization.	straits and its subsequent adoption by a competent international organization.
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Thalweg Doctrine

It provides that for boundary rivers, in the absence of an agreement between the riparian States, the boundary line is laid in the middle of the main navigable channel.

EXCLUSIVE ECONOMIC ZONE (2000, 2004, 2005, 2015 Bar)

It gives the coastal State sovereign rights overall economic resources of the sea, sea-bed and subsoil in an area extending not more than 200 nautical miles beyond the baseline from which the territorial sea is measured (UNCLOS, Articles. 55 & 57).

Rights of the coastal state in the EEZ (2004, 2005 Bar)

1. *Sovereign rights;*
 - a. For the purpose of exploring and exploiting, conserving and managing the living and non-living resources in the super adjacent waters of the sea-bed and the resources of the sea-bed and subsoil; and
 - b. With respect to the other activities for the economic exploitation and exploration of the EEZ, such as production of energy from water, currents and winds;
2. *Jurisdictional rights; and*
 - a. With respect to establishment and use of artificial islands;
 - b. As to protection and preservation of the marine environment; and
 - c. Over marine scientific research
3. Other rights and duties provided for in the Law of the Sea Convention (*Law of the Sea Convention, Art. 56*).

NOTE: The coastal State has no sovereignty over the EEZ. What the coastal State only has are sovereign rights, jurisdictional rights, and other rights under the Law of the Sea Convention.

The coastal state may inspect and arrest ship's crew in its EEZ

The coastal State may board, and inspect a ship, arrest a ship and its crew and institute judicial proceedings against them. Arrested vessels and



their crews may be required to post reasonable bond or any other form of security. However, they must be promptly released upon posting of bond.

In the absence of agreement to the contrary by the States concerned, UNCLOS does not allow imprisonment or any other form of corporal punishment. However, in cases of arrest and detention of foreign vessels, it shall promptly notify the flag state of the action taken.

Primary obligations of coastal states over the EEZ

1. Proper conservation and management measures that the living resources of the EEZ are not subjected to over-exploitation; and

NOTE: The UNCLOS does not set a limit, except by the duty of the coastal state not to overexploit (*Magallona, 2005*).

2. Promote the objective of "optimum utilization" of the living resources, and to this end, to determine the maximum allowable catch of such resources in relation to its capacity to harvest the allowable catch [UNCLOS, Art. 61(2), 62(1)].

Objectives of conservation of living resources in the EEZ

1. The determination of the allowable catch of the living resources;
2. The maintenance of the living resources in such a way that they are not endangered by over-exploitation;
3. The maintenance or restoration of population of harvested species at levels which can produce the maximum sustainable yield; and (UNCLOS, Art. 61); and
4. The maintenance of associated or dependent species above levels at which their reproduction may become seriously threatened (UNCLOS, Art. 61)

Note: The coastal state must determine its capacity to harvest the living resources of the EEZ. If it does not have capacity to harvest the allowable catch, it shall give other states access to the surplus of the allowable catch by means of agreements or arrangements consistent with the UNCLOS. For this purpose the coastal state may establish terms and conditions by laws and regulations (UNCLOS, Art. 62).

If the coastal state sets the allowable catch at the same level as its harvesting capacity, then no surplus is left. The result is that the access by other states to surplus stocks may prove to be illusory (*Magallona, 2005*).

Matters that the coastal state may regulate in regard to fishing by the nationals of other states in the EEZ

1. Licensing of fishermen, fishing vessels and equipment, and the payment of fishing;
2. Determining the species which may be caught and fixing the quotas to catch;
3. Regulation of seasons and areas of fishing, the types, sizes and amount of gear and fishing vessels that may be used;
4. Fixing the age and size of fish that may be caught;
5. Information required of fishing vessels, including catch and effort statistics and vessel position reports;
6. The conduct of fisheries research programs
7. The placing of observers and trainees by the coastal state on board foreign vessels;
8. The landing of the catch by foreign vessels in the ports of the coastal state;
9. The terms and conditions of joint ventures or cooperative arrangements;
10. Training of personnel and transfer of fisheries technology; and
11. Enforcement procedures.

NOTE: The nationals of other states granted access to the EEZ must comply with conservation measures and other conditions provided in these laws and regulations (UNCLOS, Art. 62).

Contiguous zone vs. EEZ (2004 Bar)

CONTIGUOUS ZONE	EEZ
Known as the protective jurisdiction and starts from the 12 th nautical mile from low water from the baseline.	Ends at the 200 th nautical mile from the baseline.
Coastal state may exercise the control necessary to (1) prevent infringement of its customs, fiscal, immigration, or sanitary laws within its territory or its territorial sea or (2) punish such infringement.	No state really has the exclusive ownership of it, but the state which has a valid claim on it according to the UNCLOS has the right to explore and exploit its natural resources.

CONTINENTAL SHELF

(1991, 2015 Bar)

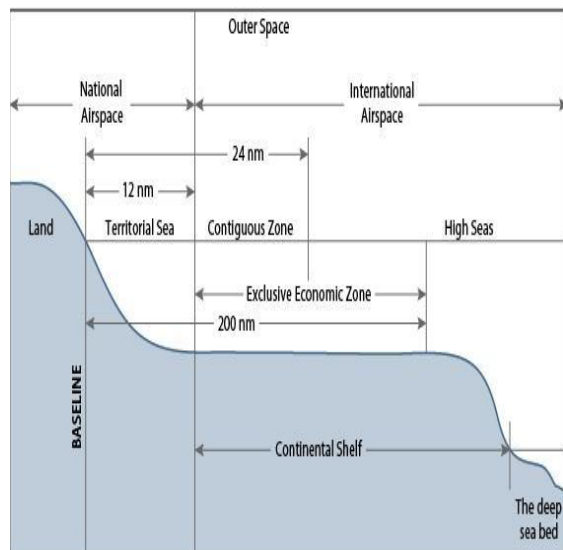
Otherwise known as archipelagic or insular shelf for archipelagos, refers to a) the seabed and subsoil of the submarine areas adjacent to the meters or, beyond that limit, to where the depth allows



exploitation, and b) the seabed and subsoil of areas adjacent to islands.

Categories of Continental shelf

1. Continental shelf; and
 - a. Geological continental shelf; and
 - b. Juridical/Legal Continental Shelf
2. Extended Continental Shelf.



Geological continental shelf

It comprises the entire prolongation of the coastal state's land mass and extends up to the outer edge of the continental margin.

It starts from the baseline from which the territorial sea is measured and has its outer limit at the outer edge of the continental margin which may extend beyond the 200 nautical miles from the baseline, or may fall short of that distance.

Continental shelf (Juridical/Legal Continental Shelf)

It comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles beyond the baselines from which the breadth of the territorial sea is measured if the edge of the continental margin does not extend up to that distance [UNCLOS, Art. 76(1)].

NOTE: The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation [UNCLOS, Art. 77(3)].

The UNCLOS unifies the continental and the extended continental shelves into one by providing that the continental shelf extends to the breadth of either shelf, whichever is the farthest [UNCLOS, Art. 76(1)(4)].

Continental margin

It is the submerged prolongations of the land mass of the coastal state, consisting of the continental shelf proper, the continental slope and the continental rise. It does not include the deep ocean floor with its ocean ridges or the subsoil [UNCLOS, Art. 76(3)].

NOTE: The coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond the 200 nautical miles from the baselines. In establishing the Continental Margin it shall either use:

1. A line drawn by reference to points no more than 60 nautical miles from the foot of the continental slope; or
2. A line drawn by reference to points at which the thickness of sediments is less than one percent of the distance to the base of the continental slope [UNCLOS, Art. 76(4)].

Permissible breadth of the continental shelf

Under the said UN Convention, it extends to a distance not extending 200 nautical miles from the baselines. However, if the coastal State succeeds in its application for an extended continental shelf, it may extend to not more than 350 nautical miles [UNCLOS, Art. 76(1)(5)].

NOTE: Under Presidential Proclamation 370, the continental shelf has no such legal limit. It extends outside the area of the territorial sea "to where the depth of the superjacent waters admits of the exploitation of such natural resources." In this case, exploitation of resources may go beyond the 200 nautical miles.

EXTENDED CONTINENTAL SHELF

It is that portion of the continental shelf that lies beyond the 200 nautical miles limit in the juridical/legal continental Shelf (*ibid*).

Benham Plateau

It is also known as the *Benham Rise*. The Philippines lodged its claim on the area with the United Nations Commission on the Limits of the Continental Shelf on April 8, 2009. The UNCLOS approved the claim of the Philippines that the Benham Plateau is part of Philippine Territory on April 12, 2012.

Sovereign rights of a coastal State over the continental shelf

1. Right to explore and exploit its natural resources [UNCLOS, Art. 77(1)];

NOTE: This right is exclusive. Should the coastal State not explore or exploit the natural resources, no one may undertake these activities without the express consent of the coastal State [UNCLOS, Art. 77(2)]. Natural resources include mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species [UNCLOS, Art. 77(4)].

Rule on payment for exploitation of non-living resources

GR: Exploitation of the non-living resources of the continental shelf beyond 200 nautical miles would entail the coastal State to make payments or contributions in kind which shall be made annually with respect to all production at site after the first five years of production and 1% of the value or volume of production at the site at the sixth year. It shall increase by 1% for each subsequent year until the 12th year where it shall remain at 7%.

The payments or contributions shall be made through the International Seabed Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the landlocked among them [UNCLOS, Art. 82(1)(2)(4)].

XPN: A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource [UNCLOS, Art. 82(3)].

2. To lay submarine cables and pipelines on the continental shelf [UNCLOS, Art. 79(1)];

NOTE: State may make reasonable measures for the prevention, reduction and control of pollution from pipelines. The laying of cables is limited by the right of the coastal state to take measures in exploring its continental shelf, exploiting the natural resources, and the protection of the marine environment from pollution [UNCLOS, Art. 79].

3. Artificial islands, installations and structures on the continental shelf [UNCLOS, Art. 80];

NOTE: Exclusive right to construct, to authorize the construction, operation and use of artificial islands and installations. Jurisdiction is also exclusive [UNCLOS, Art. 80];

4. Marine scientific research [UNCLOS, Art. 246(1)]; and

NOTE: May be conducted only with consent. Beyond the 200 nautical mile, the coastal State cannot withhold consent to allow research on the ground that the proposed research project has direct significance to exploration or exploitation of natural resources [UNCLOS, Art. 246(2)(6)].

5. Right to authorize and regulate drilling on the continental shelf for all purposes [UNCLOS, Art. 81]

NOTE: This right is exclusive.

Limitation on the rights of coastal state over the continental shelf

Rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters and such exercise of right must not infringe or result in unjustifiable interference with navigation and other rights and freedoms of other States [UNCLOS, Art. 78(1)(2)].

Island

It is a naturally formed area of land, surrounded by water, which is above water at high tide.

NOTE: The continental shelf of an island is recognized. However, rocks which cannot sustain human habitation or economic life shall have no continental shelf or EEZ.

High or Open seas

The waters, which do not constitute the internal waters, archipelagic waters, territorial sea and exclusive economic zone of a state. They are beyond the jurisdiction and sovereign rights of states [UNCLOS, Art. 86].

It is treated as *res communes* or *res nullius*, and thus, are not part of the territory of a particular State [UNCLOS, Art. 89].

Freedoms on the high seas

These are the freedom of: (NOLAFS)

1. Navigation;
2. Overflight;
3. To lay submarine cables and pipelines;



4. To construct artificial islands and other installations permitted under international law;
5. Fishing; and
6. Scientific research (*UNCLOS, Art. 87[1] in relation to Art. 90*).

NOTE: This is open to all States and shall be exercised with due regard for the interests of other States in their exercise of the freedom of the high seas [*UNCLOS, Art. 87(2)*].

Flag State

It refers to the State whose nationality the ship possesses; for it is nationality which gives the right to fly a country's flag. In the high seas, a state has exclusive jurisdiction over ships sailing under its flag. It is required however, that there exists a genuine link between the State and the ship [*UNCLOS, Arts. 91(1), 92(2)*].

Duty of the flag state

A flag state has the duty to render assistance in distress in the sense that it shall require the master of the ship, without serious danger to the ship, crew or passengers, to render assistance to any person at sea in danger of being lost, or to rescue persons in distress. It shall require the master to assist the other ship after a collision or its crew and passengers (*UNCLOS, Art. 98*).

Applicable laws to vessels sailing on the high seas

GR: Vessels sailing on the high seas are subject only to international law and to the laws of the flag State.

XPN: However, the arrest or boarding of a vessel sailing in the high seas may be made by a State, other than the flag-State of such vessel, in the following instances:

1. A foreign merchant ship by the coastal State in its internal waters, the territorial sea and the contiguous zones for any violation of its laws;
2. A foreign merchant ship for piracy;
3. Any ship engaged in the slave trade;
4. Any ship engaged in unauthorized broadcasting; or
5. A ship without nationality or flying a false flag or refusing to show its flag.

Flag of Convenience (2004 Bar)

It is a national flag flown by a ship not because the ship or its crew has an affiliation with the nation, but because the lax controls and modest fees and taxes imposed by that nation have attracted the owner to register it there.

Jurisdiction over crimes committed on board a foreign private vessel anchored in a coastal state

Under both the English and French rules, a crime will be tried by a local state, if serious enough as to compromise the peace of its port; otherwise by the flag state, if it involves only the members of the crew and is of such a petty nature as not to disturb the peace of the local state.

In the *French rule*, it recognizes the jurisdiction of the flag state over crimes committed on board the vessel except if the crime disturbs the peace, order and security of the host country. In *English rule*, the host country has jurisdiction over the crimes committed on board the vessel unless they involve the internal management of the vessel.

Instances when a State may exercise jurisdiction on open seas

1. Slave trade;
2. Hot pursuit;
3. Right of approach; and
4. Piracy.

Duty of every state in the transportation of slaves

Every state shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of the flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free (*UNCLOS, Art. 99*).

Doctrine of Hot Pursuit

It provides that the pursuit of a vessel maybe undertaken by the coastal State which has "good reason to believe that the ship has violated the laws and regulations of that State."

Elements of the Doctrine Of Hot Pursuit

1. The pursuit must be commenced when the ship is within the internal waters, territorial sea or the contiguous zone of the pursuing State, and may only be continued outside if the pursuit has not been interrupted;
2. It is continuous and unabated; and
3. Pursuit conducted by a warship, military aircraft, or government ships authorized to that effect. (*UNCLOS, Art. 111*)

Arrival Under Stress

It refers to involuntary entrance of a foreign vessel on another state's territory which may be due to lack of provisions, unseaworthiness of the vessel,

inclement weather, or other case of force *majeure*, such as pursuit of pirates.

Piracy under the UNCLOS

Piracy consists of any of the following acts:

1. Illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed:
 - a. On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - b. Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.
2. Act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; and
3. Act of inciting or of intentionally facilitating an act described above [UNCLOS, Art. 101].

NOTE: If committed by a warship, government ship or governmental aircraft whose crew mutinied and taken control of the ship or aircraft, it is assimilated to acts committed by a private ship or aircraft [UNCLOS, Art. 102].

A ship or aircraft retains its nationality although it has become a pirate [UNCLOS, Art. 104].

Warships on the high seas enjoy immunity from jurisdiction of other states. They enjoy complete immunity. The jurisdiction of their flag state is exclusive [UNCLOS, Art. 95].

Q: A Filipino owned construction company with principal office in Manila leased an aircraft registered in England to ferry construction workers to the Middle East. While on a flight to Saudi Arabia with Filipino crew provided by the lessee, the aircraft was hijacked by drug traffickers. The hijackers were captured in Damascus and sent to the Philippines for trial. Do the courts of Manila have jurisdiction over the case?

A: Hijacking is actually piracy, as defined in *People v. Lol-lo* (G.R. No. 17958, February 27, 1922), as robbery or forcible depredation in the high seas without lawful authority and done *animo furandi* and in the spirit and intention of universal hostility. Piracy is a crime against all mankind. Accordingly, it may be punished in the competent tribunal in any country where the offender may be found or into which he may be carried. The jurisdiction on piracy unlike all other crimes has no territorial limits. As it is against all, all so may punish it. Nor does it matter that the crime was committed within the jurisdictional three-mile limit of a foreign State for those limits, though neutral to war, are not neutral to crimes.

Land-locked states

These are states which do not border the seas and do not have EEZ.

Geographically disadvantaged states

1. Coastal states which can claim no EEZ of their own; and
2. Coastal states, including states bordering closed or semi-closed states, whose geographical situations make them dependent on the exploitation of the living resources of the EEZ of other coastal states in the region [UNCLOS, Art. 70(2)].

Rights of land-locked states and geographically disadvantaged states

1. Land-locked States shall have the right to participate, on an equitable basis, the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same sub region or region, taking into account the relevant economic and geographical circumstances of all States concerned [UNCLOS, Art. 69(1)]; and
2. Developed land-locked States shall be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same sub region or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone [UNCLOS, Art. 70(1)].

NOTE: This is without prejudice to arrangements agreed upon in sub region or regions where the coastal State may grant to land-locked States of the same sub region or region equal or preferential rights for the exploitation of the living resources in the EEZ [UNCLOS, Art. 70(6)].

This however shall not apply in case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its EEZ [UNCLOS, Art. 71].



EXTENT and DEFINITION		RIGHTS and POWERS OF STATES
Internal Waters	These are waters enclosed by the archipelagic baselines, regardless of their depth or distance from the coast.	<ol style="list-style-type: none"> 1. Rights under existing agreement on the part of the third states should be respected. 2. The traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States. 3. Existing submarine cables laid by other States and "passing through its waters without making a windfall" as well as the maintenance and replacement of such cables upon being notified of their location and the intention to repair or replace them.
Territorial Sea	<p>Territorial Seas are defined by historic right or treaty limits.</p> <p>As defined in the Convention on the Law of the Sea, it has a uniform breadth of 12 miles measured from the lower water mark of the coast.</p>	Coastal states exercise sovereignty over Territorial sea and it extends to the airspace over the territorial sea and to its seabed and subsoil.
Contiguous Zone	It is the zone adjacent to the territorial sea. The contiguous zone may not extend more than 24 nautical miles beyond the baseline from which the breadth of the territorial sea is measured 12 nautical miles from the territorial sea.	<p>The coastal state does not have sovereignty over the contiguous zone because the contiguous zone is a zone of jurisdiction for a particular purpose, not of sovereignty.</p> <p>State may exercise control as is necessary to:</p> <ol style="list-style-type: none"> 1. Prevent infringement of its customs, fiscal, immigration, or sanitary laws within its territory or its territorial sea or 2. Punish such infringement.

Exclusive Economic Zone	It gives the coastal State sovereign rights overall economic resources of the sea, seabed and subsoil in an area extending not more than 200 nautical miles beyond the baseline from which the territorial sea is measured.	States may exercise; <ol style="list-style-type: none">1. Sovereign rights;2. Jurisdictional rights; and3. Other rights and duties provided for in the Law of the Sea Convention. <i>(Please see discussion on rights of the coastal state in the EEZ, p. 50)</i>
High Seas	The waters, which do not constitute the internal waters, archipelagic waters, territorial sea and exclusive economic zone of a state.	They are beyond the jurisdiction and sovereign rights of state. It is treated as <i>res communes</i> or <i>res nullius</i> , and thus, are not part of the territory of a particular State.



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

International Tribunal for the Law of the Sea (ITLoS)

It is an independent judicial body established by the Third United Nations Convention on the Law of the Sea that adjudicates disputes arising out of the interpretation and application of the Convention. It was established after Ambassador Arvido Pardo Malta addressed the General Assembly of the United Nations and called for “an effective international regime over the seabed and ocean floor beyond a clearly defined national jurisdiction”. Its seat is in Hamburg, Germany.

Part XV of the 1982 UN Convention on the Law of the Sea requires States to settle peacefully any dispute concerning the Convention. Failing a bilateral settlement, it provides that any dispute shall be submitted for compulsory settlement to one of the tribunals having jurisdiction (*UNCLOS, Art. 286*). These include the ITLoS, the International Court of Justice (ICJ), and arbitral or special arbitral tribunals constituted under the UNCLOS.

The ITLoS is composed of 21 independent members elected by the States parties to the UNCLOS from among persons with recognized competence in the field of the law of the sea and representing the principal legal systems of the world.

Jurisdiction of the tribunal

Its jurisdiction comprises all disputes and all applications submitted to it and all matters specifically provided for in any other agreement which confers jurisdiction to the Tribunal.

Rules with regard to membership in the Tribunal

1. No two members of the Tribunal may be nationals of the same State [*UNCLOS, Annex VI, Statute of ITLoS, Art. 3(1)*];

NOTE: The person shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights (*Ibid*).

2. There should be no fewer than three members from each geographical group to be established by the UN General Assembly [*UNCLOS, Annex VI, Statute of ITLoS, Art. 3(2)*];
3. No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the

resources of the sea or the seabed or other commercial use of the sea or the seabed [*UNCLOS, Annex VI, Statute of ITLoS, Art. 7(1)*];

4. No member of the Tribunal may act as agent, counsel or advocate in any case [*UNCLOS, Annex VI, Statute of ITLoS, Art. 7(2)*];
5. No member of the Tribunal may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity [*UNCLOS, Annex VI, Statute of ITLoS, Art. 8(1)*]; and
6. If for some special reason a member of the Tribunal should not sit in a particular case:
 - a. Member should inform the President of the Tribunal [*UNCLOS, Annex VI, Statute of ITLoS, Art. 8(2)*]; or
 - b. President should give the member notice accordingly [*UNCLOS, Annex VI, Statute of ITLoS, Art. 8(3)*].

NOTE: Any doubt shall be resolved by decision of the majority of other members of the Tribunal present (*UNCLOS Annex VII, Arbitration, Art. 7, 8*).

Members enjoy diplomatic privileges and immunities (*UNCLOS Annex VII, Arbitration, Art. 10*).

Jurisdiction of the Seabed Dispute Chamber

The categories of its jurisdiction are the following:

1. Disputes between State Parties concerning the interpretation or application of treaty or convention may, in accordance with such agreement, be submitted to the Tribunal.
2. Disputes between a State Party and the Authority concerning:
 - a. Acts or omissions of the Authority or of a State Party alleged to be violations of the convention; or
 - b. Acts of the Authority alleged to be in excess of jurisdiction of a misuse of power.
3. Disputes between parties to a contract, being State Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons concerning:
 - a. Interpretation or application of a relevant contract or a plan of work; or
 - b. Acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interest.
4. Disputes between the Authority and a prospective contractor who has been sponsored by a State.
5. Disputes between the Authority and a State Party, a state enterprise or a natural or juridical person sponsored by a State Party.



6. Any other disputes for which the jurisdiction of the Chamber is specifically provided for in the Convention.

Alternative means for the settlement of disputes established by the Convention

Aside from the ITLOS, it also established the International Court of Justice, an arbitral tribunal constituted in accordance with Annex VII to the Convention and a special arbitral tribunal constituted in accordance with Annex VIII of the Convention.

THE WEST PHILIPPINE SEA CASE

Arguments of the Republic of the Philippines (RP):

1. Declarations that the Philippines' and China's respective rights and obligations in regard to the waters, seabed, and maritime features of the South China Sea are governed by the UNCLOS; and that China's claims based on "historic rights" encompassed within its so-called "Nine-dash Line" are inconsistent with the UNCLOS and therefore invalid;
2. Determinations as to whether, under the UNCLOS, certain maritime features claimed by both states are properly characterized as islands, rocks, low tide elevations, or submerged banks. The Philippines claims in particular that Scarborough Shoal and eight of such features in the Spratlys are low-tide elevations or submerged banks that merely generate a territorial sea (TS), not an exclusive economic zone (EEZ) or continental shelf (CS); and
3. Declarations that China has violated the UNCLOS by interfering with the Philippines' sovereign rights and freedoms, through construction and fishing activities that have harmed the marine environment.

Arguments of the People's Republic of China (PRC):

China contested the Tribunal's jurisdiction on the following grounds:

1. That the essence of the subject-matter of the arbitration is the territorial sovereignty over several maritime features in the South China Sea (SCS), which is beyond the scope of the Convention, and does not concern the interpretation or application of the Convention;
2. That the two countries have agreed, through bilateral instruments and the Declaration on the Conduct of Parties in the SCS, to settle their relevant disputes through negotiations. Thus, the Philippines' resort to arbitration is a breach of its obligations under international law; and

3. Even assuming, *arguendo*, that the subject-matter of the arbitration were concerned with the interpretation or application of the Convention, that subject-matter would constitute an integral part of maritime delimitation, which is covered by China's 2006 declaration excluding maritime delimitation from its acceptance of compulsory dispute settlement procedures under the UNCLOS.

Award on Jurisdiction and Admissibility

The Tribunal found that the submissions of the Philippines did not *per se* involve disputes concerning sovereignty or maritime boundary delimitation, which are among the issues that may be excluded by States from the subject-matter jurisdiction of compulsory dispute settlement procedures entailing binding decisions under the UNCLOS. However, this exclusion of the issue of sovereignty or maritime boundary delimitation is premised on the Philippines' position that the features claimed by China belong to the Philippines; are low-tide elevations or rocks only that do not generate either a Territorial Sea (TS), EEZ, or a Continental Shelf (CS), or EEZ or a CS only; and that as such, in the case that any/some/all of these features are found to belong to China, the maritime entitlements they will generate, if at all, will not overlap with the Philippines' own maritime entitlements.

The above reasoning will also determine whether China acted unlawfully with respect to the enjoyment of the Philippines of its rights, and the obligation to protect and preserve the marine environment, within the disputed areas. The Tribunal also acknowledged that other findings on the merits may preclude its jurisdiction, where fishing and fisheries related law enforcement, and military activities, may be in issue. With respect to the Scarborough Shoal, however, the Tribunal found that the exceptions under Art. 297 and 298 cannot oust it of jurisdiction, given that the activities complained of involve traditional fishing rights and other events occurring in the territorial sea, a maritime area over which the said provisions have no application.

Finally, the Tribunal asked the Philippines to clarify the content and narrow the scope of its last submission, requesting a declaration that "China shall desist from further unlawful claims and activities."

Tribunal's Decision on the Merits of the Philippines' Claim

1. The 'nine-dash line' and China's claim to historic rights in the maritime areas of the South China Sea



Whether China has historic rights to resources in the South China Sea beyond the limits of the maritime zones that it is entitled to pursuant to the Convention

- Based on the history of the Convention and its provisions concerning maritime zones, the Convention was intended to comprehensively allocate the rights of States to maritime areas
- The question of pre-existing rights to resources was considered during the negotiations on the creation of exclusive economic zone and a number of States wished to preserve historic fishing rights in the new zone: this position was rejected; the final text of the Convention gives other States only a limited right of access to fisheries in the exclusive economic zone and no rights to petroleum or mineral resources
- China's claim to historic rights to resources was incompatible with the detailed allocation of rights and maritime zones in the Convention: that China had historic rights to resources in South China Sea waters, such rights were extinguished when the Convention entered into force to the extent that they were incompatible with the Convention's system of maritime zones

Whether China actually had historic rights to resources in the South China Sea prior to the entry into force of the Convention

- Prior to the Convention, the waters of the South China Sea beyond the territorial sea were legally considered part of the high seas where vessels from any State can fish and navigate
- Historical navigation and fishing by China in the waters of the South China Sea were an exercise of high sea freedoms rather than a historic right; there is no evidence that China had historically exercised exclusive control over the waters of the South China Sea or prevented other States from exploiting their resources
- Between the Philippines and China, there was no legal basis for China to claim historic rights to resources, in excess of the rights provided by the Convention, within the sea areas falling within the 'nine-dash line'

2. The status of features in the South China Sea

Whether certain coral reefs claimed by China are or are not above water at high tide

- Arts. 13 and 121: features that are above water at high tide generate an entitlement to at least a 12-nautical mile territorial sea; features that are submerged at high tide generate no entitlement to maritime zones
- Many of the reefs in the South China Sea have been heavily modified by recent land reclamation and construction; the Convention classifies features on the basis of their natural condition

- Evaluation of features based on the assistance of an expert hydrographer and archival materials and historical hydrographic surveys

-Scarborough Shoal, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef are high-tide features, and

-Subi Reef, Hughes Reef, Mischief Reef, and Second Thomas Shoal were submerged at high tide in their natural condition

-But Gaven Reef (North) and McKennan Reef are high-tide features

Whether any of the features claimed by China could generate an entitlement to maritime zones beyond 12 nautical miles

- Art. 121 of the Convention: islands generate an entitlement to an exclusive economic zone of 200 nautical miles and to a continental shelf, but rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf — closely linked to the expansion of coastal State jurisdiction and intended to prevent insignificant features from generating large entitlements to maritime zones that would infringe on entitlements of inhabited territory or on high seas and the area of the seabed reserved for the common heritage of mankind

- Entitlements of a feature depend on the a) objective capacity of a feature, b) its natural conditions to sustain either c) a stable community of people or d) economic activity that is neither dependent on outside resources nor purely extractive in nature

- Even if many of the features are currently controlled by one or other of the littoral States, which have constructed installations and maintained personnel there and have been modified to improve their habitability (by land reclamation and construction of infrastructure), the current presence of official personnel on many of the features does not establish their capacity, in their natural condition, to sustain a stable community of people and considered that historical evidence of habitation or economic life was more relevant to the objective capacity of the features

- Temporary use of features (as in by small groups of Chinese fishermen and from other states in the Spratly Islands and Japanese fishing and guano mining enterprises) did not amount to inhabitation by a stable community and that all historical economic activity had been extractive in nature

- All high-tide features in the Spratly Islands are legally "rocks" that do not generate an exclusive economic zone or continental shelf

- The Convention does not provide for a group of islands (such as the Spratly Islands) to generate maritime zones collectively as a unit



3. Chinese activities in the South China Sea Lawfulness of various Chinese actions in the South China Sea under the Convention

- Because Mischief Reef, Second Thomas Shoal and Reed Bank are submerged at high tide and are not overlapped by any possible entitlement of China, they form part of the exclusive economic zone and continental shelf of the Philippines; the Convention is clear in allocating sovereign rights to the Philippines with respect to sea areas in its exclusive economic zone
- China had violated the Philippines' sovereign rights with respect to its exclusive economic zone and continental shelf: China had a) interfered with Philippine petroleum exploration at Reed Bank, b) purported to prohibit fishing by Philippine vessels within the Philippines' exclusive economic zone, c) protected and failed to prevent Chinese fishermen from fishing within the Philippines' exclusive economic zone at Mischief Reef and Second Thomas Shoal, and d) constructed installations and artificial islands at Mischief Reef without the authorization of the Philippines

Traditional fishing at Scarborough Shoal

- Fishermen from both China and the Philippines and from other countries had long fished at the Scarborough Shoal and had traditional fishing rights in the area
- Scarborough Shoal is above water at high tide so it generates an entitlement to a territorial sea, its surrounding waters do not form part of the exclusive economic zone, and traditional fishing rights were not extinguished by the Convention
- China had violated its duty to respect the traditional fishing rights of Philippine fishermen by halting access to the Shoal after May 2012

Effect of China's actions on the marine environment

- China's large scale land reclamation and construction of artificial islands at seven features in the Spratly Islands has caused severe harm to the coral reef environment
- China violated its obligations under Articles 192 and 194 of the Convention to preserve and protect the marine environment with respect to fragile ecosystems and the habitat of depleted, threatened, or endangered species
- Chinese fishermen were engaged in the harvesting of endangered sea turtles, corals and giant clams on a substantial scale in the South China Sea using methods that inflicted severe damage on the coral reef environment; Chinese authorities were aware of these and failed to fulfill their due diligence obligation under the Convention to stop them

Lawfulness of conduct of Chinese law enforcement vessels at Scarborough Shoal in April and May 2012

(Chinese vessels sought to physically obstruct Philippine vessels from approaching or gaining entrance to the Shoal)

- Assisted by an independent expert on navigational safety and expert evidence on navigational safety provided by the Philippines
- Chinese law enforcement vessels had repeatedly approached the Philippine vessels at high speed and to cross ahead of them at close distances, creating serious risk of collision and danger to Philippine ships and personnel
- China breached its obligations under the Convention on the International Regulations for Preventing Collisions at Sea (1972), and Art. 94 of the Convention concerning maritime safety

4. Aggravation of the dispute between the parties

Whether China's recent large-scale land reclamation and construction of artificial islands at seven features in the Spratly Islands since the commencement of the arbitration had aggravated the dispute between the Parties

- Parties engaged in a dispute settlement procedure have a duty to refrain from aggravating or extending the dispute or disputes at issue during the pendency of the settlement process
- China has a) build a large artificial island on Mischief Reef which is within the exclusive economic zone of the Philippines, b) caused permanent harm to the coral reef ecosystem, and c) permanently destroyed evidence of the natural condition of the features in question
- China violated its obligations to refrain from aggravating or extending the Parties' disputes during the pendency of the settlement process

5. Future conduct of the parties

Philippines request for declaration that China shall respect the rights and freedoms of the Philippines and comply with its duties under the Convention

- Both the Philippines and China have accepted the Convention and general obligations of good faith define and regulate their conduct
- The root of the disputes at issue in this arbitration lies not in any intention of any Party to infringe on the legal rights of the other but in the fundamentally different understandings of their respective rights under the Convention in the waters of the South China Sea

(The Republic of the Philippines v. The People's Republic of China, Case No. 2013-19 in the Permanent Court of Arbitration Before the Arbitral Tribunal constituted under UNCLOS Annex VII, July 12, 2016, case brief provided by UP Law Institute for Maritime Affairs and Law of the Sea)



MADRID PROTOCOL AND THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

Madrid Protocol

It is the Protocol relating to the Madrid Agreement which governs the system of international registration of marks. The system makes it possible to protect a mark in a large number of countries by obtaining an international registration which has effect in each of the Contracting Parties that has been designated.

Process for securing protection of marks through international registration

NOTE: Any reference to an "office" shall be construed as a reference to the office that is in charge, on behalf of a Contracting Party, of the registration of marks, and any reference to "marks" shall be construed to pertain to trademarks and service marks.

1. Where an application for the registration of a mark has been filed with the Office of a Contracting Party or registered in the register of the Office of a Contracting party, the person in whose name that application (basic application) or that registration (basic registration) stands may, subject to the provisions of the Madrid Protocol, secure protection for his mark in the territory of the Contracting Parties, by obtaining the registration of that mark in the register of the International Bureau of the World Intellectual Property Organization, provided that: where the basic application has been filed with the Office of a Contracting State or Organization or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of that Contracting State or of a State member of the Contracting Organization, or is domiciled, or has a real and effective industrial or commercial establishment, in the said Contracting State or State member.
2. The application for international registration (international application) shall be filed with the International Bureau through the intermediary of the Office with which the basic application was filed or by which the basic registration was made, as the case may be.

Territory of a Contracting Party

Where the Contracting Party is a State, the territory of that State, and where the Contracting Party is an intergovernmental organization, the territory in

which the constituting treaty of that intergovernmental organization applies (*Madrid Protocol, Art. 2*).

The following may use the system:

1. A natural person; or
2. Legal entity having a connection, through establishment, domicile or nationality, with a Contracting Party to the Madrid Protocol or Agreement (*Madrid Protocol, Art. 2*).

Effects on an international registration

The effects of an international registration in each designated Contracting Party are, as from the date of the international registration, the same as if the mark had been deposited directly with the Office of that Contracting Party (*Madrid Protocol, Art. 4*).

Advantages of the Madrid system

Instead of filing many national applications in all countries of interest, in several different languages, in accordance with different national procedural rules and regulations and paying several different fees, an international application may be obtained by simply filing one application with the International Bureau (through the Office of the home country), in one language (either English or French) and paying only one set of fees.

Also, renewal entails simple payment of the necessary fees, every 10 years, to the International Bureau.

Likewise, if the international organization is assigned to a third party or any other change, such as a change in name and/or address, has occurred, this may be recorded with effect for all designated Contracting Parties by means of a single procedural step.

Period of validity of international registration under the Madrid Protocol

10 years, with possibility of renewal under the conditions set forth in Art. 7 thereof (*Madrid Protocol, Art. 6*).

Requirements for renewal of international registration

1. Renewal for a period of only 10 years from the expiry of the preceding period;
2. Payment of the basic fee; and
3. It must not bring about any change in the international registration in its latest form (*Madrid Protocol, Art. 7*).



NOTE: The International Bureau shall, by sending an unofficial notice, remind the holder of the international registration and its exact date of expiry six months before the expiry of the term of protection.

Moreover, a period of grace of 6 months shall be allowed for such renewal (*Madrid Protocol, Art. 7, pars. 3 & 4*).

Paris Convention on protection of industrial property

It applies to industrial properties in the widest sense. It includes patents, marks, industrial designs, utility models, trade names, geographical indications and the repression of unfair competition.

Industrial property

Shall be understood in the broadest sense, and shall apply not only to industry or commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers and flour (*Paris Convention, Art. 1*).

INTERNATIONAL ENVIRONMENTAL LAW

It is the branch of public international law comprising "those substantive, procedural and institutional rules which have as their primary objective the protection of the environment," the term environment being understood as encompassing "both the features and the products of the natural world and those of human civilization."

Environmental concerns, related to Human Rights

The protection of the environment is a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health, and the right to life itself (*Danube Dam Case, ICJ Rep 1997*).

PRINCIPLE 21 OF THE STOCKHOLM DECLARATION

Stockholm Declaration

The Stockholm Declaration, or the Declaration of the United Nations Conference on the Human Environment, was adopted on June 16, 1972 in Stockholm, Sweden. It contains 26 principles and 109 recommendations regarding the preservation and enhancement of the right to a healthy environment.

Principle 21 of the Stockholm Declaration

This declares that States have:

1. The sovereign right to exploit their own resources pursuant to their own environmental policies; and
2. The responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction or otherwise known as the Good Neighborliness Principle (*Sarmiento, 2007*).

Principle 21 of the Stockholm Declaration is a part of customary law

The Court recognizes that the environment is daily under threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment (*ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, July 8, 1996*).

Principle of Common but Differentiated Responsibility

This principle requires the protection of specified environmental resource or area as common responsibility but takes into account the differing circumstances of certain States in the discharge of such responsibilities [*Framework Convention on Climate Change, Art. 3(1)*].

It is also embodied in the Rio Declaration which states: "...In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command." (*Rio Declaration, Principle 7*)

PRECAUTIONARY PRINCIPLE

Principle 15 of the Rio Declaration, commonly known as the Precautionary Principle states:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there



are threats of serious damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

NOTE: This principle advocates that the potential harm should be addressed even with minimal predictability at hand. The Precautionary Principle requires a high degree of prudence on the part of the stakeholders. Decision makers are not only mandated to account for scientific uncertainty but can also take positive action, e.g., restrict a product or activity even when there is scientific uncertainty.

Under Rule 20 of the Rules of Procedure for Environmental Cases, the Precautionary Principle is adopted as a rule of evidence. The Supreme Court's adoption of the Precautionary Principle in the newly promulgated Rules of Procedure for Environmental Cases affords plaintiffs a better chance of proving their cases where the risks of environmental harm are not easy to prove.

Q: NAPOCOR began constructing steel towers to support overhead high tension cables in connection with its Sucat-Araneta-Balintawak Power Transmission Project. Residents of Dasmariñas Village were alarmed by the sight of the towering steel towers and scoured the internet on the possible adverse health effects of such structures. They got hold of published articles and studies linking the incidence of a fecund of illnesses to exposure to electromagnetic fields. The illnesses range from cancer to leukemia.

Petitioners filed a complaint for the Issuance of a TRO and/or a Writ of Preliminary Injunction against NAPOCOR. This was granted by the trial court. The Court of Appeals reversed the order, holding that the proscription on injunctions against infrastructure projects of the government is clearly mandated by Sec. 1 of P.D. 1818. Is the issuance of a Writ of Preliminary Injunction justified, despite the mandate of P.D. 1818?

A: Whether there is a violation of petitioners' constitutionally protected right to health is a question of law that invested the trial court with jurisdiction to issue a TRO and subsequently, a preliminary injunction. This question of law divests the case from the protective mantle of Presidential Decree No. 1818.

There is adequate evidence on record to justify the conclusion that the project of NAPOCOR probably imperils the health and safety of the petitioners so as to justify the issuance by the trial court of a writ

of preliminary injunction. The health concerns are at the very least, far from imaginary.

In hindsight, if, after trial, it turns out that the health-related fears that petitioners cleave on to have adequate confirmation in fact and in law, the questioned project of NAPOCOR then suffers from a paucity of purpose, no matter how noble the purpose may be. For what use will modernization serve if it proves to be a scourge on an individual's fundamental right, not just to health and safety, but, ostensibly, to life preservation itself, in all of its desired quality (*Hernandez v. NAPOCOR*, G.R. No. 145328, March 23, 2006)?

Polluter Pays Principle

It means that the party responsible for producing the pollutants must bear responsibility for shouldering the costs of the damage done to the environment. It is expressly stated in Principle 16 of the Rio Declaration on Environment and Development: "National authorities should endeavor to promote the internalization of environment costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment" (*Rio Declaration, Principle 16*).

Other principles of International Environmental Law set forth in the Rio Declaration

1. States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (*Principle 2*);
2. Right to development must be fulfilled so as to equitably meet development needs of present and future generations (*Principle 3*); and
3. In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it (*Principle 4*).

Long-Range Transboundary Air Pollution

It means air pollution whose physical origin is situated wholly or in part within the area under the national jurisdiction of one State and which has adverse effects in the area under the jurisdiction of another State at such a distance that is not generally possible to distinguish the contribution of individual emission sources or groups of sources (*1979 Convention on Long-Range Transboundary Air Pollution, Art. 1*).



Two Fundamental Principles of liability for transboundary pollution under international law

- a) First, a state must show material damage and causation to be entitled to legal relief; and
- b) Second, a state has a duty to prevent, and may be held responsible for pollution by private parties within its jurisdiction if such pollution results in demonstrable injury to another state (*Trail Smelter Case, US v. Canada, 1941*).

Sustainable Development

It is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Principles that embody sustainable development

1. *Principle of intergenerational equity* – The need to preserve natural resources for the benefit of future generations;
2. *Principle of sustainable use* – The aim of exploiting natural resources in a manner which is "sustainable," or "prudent," or "rational," or "wise," or "appropriate";
3. *Principle of equitable use or intragenerational equity* – The equitable use of natural resources, which implies that use by one state, must take into account the needs of other states; and
4. *Principle of integration* – The need to ensure that environmental considerations are integrated into economic and other developmental plans, programs and projects, and that development needs are taken into account in applying environmental objectives.

Rules for the protection of the environment in armed conflict

1. Each State Party undertakes not to engage in military or other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other Party State (*Convention on the Prohibition of Military or other Hostile Use of Environmental Modification Techniques or the Environmental Modification Convention [ENMOD], Art. 1*).

NOTE: Environmental Modification Techniques refers to any technique for the changing through the deliberate manipulation of natural processes the dynamics, composition or structure of the earth including its biota lithosphere, hydrosphere and atmosphere or outer space (*ENMOD, Art. II*).

2. Prohibition of the employment of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment (*Protocol I Additional to the Geneva Convention of 1949, Art. 35(3)*).

3. Pollution

It means any introduction by man, directly or indirectly, of substance or energy into the environment resulting in deleterious effects of such nature as to endanger human health, harm living resources, ecosystem, and material property and impair amenities or interfere with other legitimate uses of the environment (*Magallona, citing ILA Reports, Vol. 60, 1982*).

